87-677

Supreme Court, U.S.
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No. _____

In The

Supreme Court Of The United States

OCTOBER TERM, 1987

TITUS J. CASAZZA,
Petitioner,

v.

JOAN O. HOLBROOK,
Respondent.

GALA H. NORDQUIST,
Petitioner,

v.

JOAN O. HOLBROOK,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF CONNECTICUT WITH APPENDIX

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QUESTIONS PRESENTED

1. Did the Connecticut Supreme Court's interpretation of this court's opinion in *Bose Corporation v. Consumers Union of United States, Inc.* result in its application of the incorrect standard of review of evidence of actual malice in a defamation action brought against two municipal tax assessors by another assessor?

2. What standard of appellate review applies to evidence of conflicting interpretations of state statutes where such evidence necessarily relates to the issue of malice as well as to that of truth or falsity?

3. Does correct application of the standard of independent review compel an appellate court to consider unrefuted evidence of absence of actual malice?

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INTRODUCTORY PRAYER

The petitioners, Titus J. Casazza and Gala H. Nordquist, respectfully pray that a Writ of Certiorari issue to review the judgment and opinion of the Supreme Court of Connecticut, entered in the above-entitled proceeding on July 7, 1987. (Re-argument denied July 28, 1987.)

OPINION BELOW

The opinion of the Supreme Court of Connecticut is reported at 204 Connecticut 336, and is reprinted in the appendix hereto (A. pp. 1a–26a).

The Supreme Court of Connecticut's order denying the motion for reargument is not reported. The order is reprinted in the appendix hereto (A. p. 27a).

JURISDICTION

The judgment of the Supreme Court of Connecticut was entered on July 7, 1987 affirming the trial court's judgment on a jury verdict in favor of the respondent dated June 14, 1985. The Supreme Court of Connecticut denied a timely motion for reargument on July 28, 1987 and this petition for certiorari is being filed within 90 days of that date.

The jurisdiction of this court to review the judgment of the Supreme Court of Connecticut is invoked under 28 U.S.C. Sec. 1257(3) to determine whether the appropriate standard of review required by the First Amendment was applied in this defamation action brought by a public official.

How the Federal Question was Presented

At trial, the petitioners requested a charge on actual malice based on the standard enunciated in *New York Times v. Sullivan*, 376 U.S. 254, 279-280, 84 S.Ct. 710, 11 L. Ed. 2d 686 (1964) (A. pp. 28a-34a). The question of actual malice was properly preserved for review by the Supreme Court of Connecticut on appeal in the petitioners' preliminary statement of issues seeking review of the trial court's refusal to direct a verdict for the defendants or to set aside the plaintiff's verdict where the evidence as a matter of law was clear and unequivocal that the petitioners' statements about the respondent's conduct as the Chairman of the Board of Tax Assessors were true and made without actual malice (A. p. 35a). The opinion of the Supreme Court of Connecticut affirming the jury's finding of actual malice without independent review of the undisputed evidence with regard to the petitioners' state of mind, reasonable belief in their statements, and absence of malice preserves the question for this court of whether the appropriate standard of review was applied.

CONSTITUTIONAL PROVISIONS INVOLVED

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances. *U.S.C.A. Const. Amend. 1.*

STATUTES INVOLVED

Connecticut General Statutes Section 12-60. Correction of clerical error in assessment.

Any clerical omission or mistake in the assessment of taxes may be at any time corrected according to the fact by the assessors or board of tax review, and the tax shall be levied and collected according to such corrected assessment.

Connecticut General Statutes Section 12-62. Periodic revaluation of real estate.

(a) Commencing October 1, 1978, the assessors of all towns, consolidated towns and cities and consolidated towns and boroughs shall, no later than 10 years following the last preceding revaluation of all real property and every ten years after such revaluation, view all of the real estate of their respective municipalities, and shall revalue the same for assessment and, in the performance of these duties, except in any municipality where there is a single assessor, at least two of the assessors shall act together, and all valuations shall be separately approved by a majority of the assessors.

(b) During the conduct of any such revaluation in accordance with subsection (a) of this section in any municipality and during a period of not less than twelve months immediately following the date on which such revaluation becomes

effective, any criteria, guidelines, price schedules or statement of procedures used in such revaluation by the assessors or any person or organization performing such revaluation under contract, shall be available for public inspection in the assessor's office in such municipality in the manner provided for public records in subsection (a) of section 1-19. The provisions of this subsection shall be applicable to any such criteria, guidelines, price schedules or statement of procedures placed on file in such assessor's office on or after October 1, 1979.

STATEMENT OF THE CASE

This case involves the First Amendment rights of municipal tax assessors who charge a fellow assessor with official misconduct.

Respondent initiated defamation actions against the petitioners, claiming damages for harm to her reputation and pecuniary loss (A. pp. 36a–40a, 43a–47a). Petitioners filed answers and special defenses which were denied by respondent (A. pp. 41a–42a, 47a–48a).

The jury answered interrogatories and returned a general verdict for the respondent (A. pp. 49a–50a). The petitioners' motions to set aside the verdict and for judgment notwithstanding the verdict were denied, and judgment entered for the respondent. The petitioners appealed to the Supreme Court of Connecticut which rendered its opinion affirming the judgment of the trial court on July 7, 1987 (A. pp. 1a–26a). The petitioners' motion for reargument was denied by the court on July 28, 1987 (A. p. 27a).

Connecticut law requires a revaluation of real property every ten years in order to adjust the tax burden equitably among property owners (C.G.S. Sec. 12-62; T. p. 501). The Town of Westbrook hired an appraisal company to assist the Board of Assessors of Westbrook in its 1981 revaluation of all town property (T. pp. 45–46, 556, 1374). The role of the appraisal company was to do a physical inspection of each property and, taking such factors as location, size, zoning, etc. into consideration, set the fair market value for the property (T. pp. 42, 43, 131, 1374, 1375). Either a sales comparable or income approach was utilized in arriving at valuation (T. p. 43). The appraisal company's work was recorded on field cards and, after informal hearings for taxpayers, compiled in workbooks which were turned over to the assessors (T. pp. 53, 1374, 1375). An abstract of the revaluation data was prepared, and, upon signing by a majority of the Board of Tax Assessors, the abstract was validated and became the grand list which

established the property values for Westbrook (T. pp. 7b, 566, 567).[1] The abstract of the 1981 Westbrook revaluation was not required to be signed until February 28, 1982 (T. pp. 151, 819).

During the 1981 revaluation, the Board of Tax Assessors in Westbrook, Connecticut consisted of the respondent and the petitioners (T. pp. 40, 41). On February 23, 1982, petitioner Casazza began reviewing the assessors' books in preparation for signing the abstract (T. pp. 816, 817). During his review, he saw numerous field cards with erasures and handwriting other than that of appraisal company employees (T. pp. 820, 823, 824). The contract between the town and the appraisal company required that any value changes on field cards be written in by the appraisal company. The majority of the assessors had the final word on value, but any changes had to be written in by the company (T. pp. 1336, 1383, 1387).[2]

Casazza made a list of field cards with erasures and valuation changes because he wanted to ask the other assessors and the appraisal company about them, particularly since he had been consulted on only two of the changes (T. pp. 138a, 825–827). Respondent questioned him, and he stated that he did not want to sign the abstract until he had an opportunity to review the books (T. pp. 819, 820). The abstract was thereafter signed on February 23, 1982 by the respondent and petitioner Nordquist (T. pp. 819, 820). Casazza continued reviewing the books through March 2, 1982. He later noticed

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[1] Due to an error in pagination of the Transcript of trial proceedings, Transcript references for May 29, 1985 are followed by the letter "a" and transcript references for May 30, 1985 are followed by the letter "b."

[2] Connecticut General Statutes Section 12-62(a) requires that all valuations be separately approved by a majority of the assessors (Brief p. 4).

that valuations were changed on an additional 27 field cards after the grand list was signed (T. pp. 138a, 855).[3]

Petitioner Casazza first discussed the changes and erasures with the respondent who admitted making them and then with petitioner Nordquist who became concerned because she had known about only six of the changes (T. pp. 144a, 569, 570, 579, 828). Casazza requested a meeting with the assessors and Richard Viogrande from the appraisal company (T. pp. 143a, 827–830). The meeting was set up for March 10, 1982 (T. p. 830). The matter came to the attention of the First Selectman of Westbrook, and he attended the March 10 meeting (T. pp. 143a, 829–830).[4] Some of the erasures and valuation changes were discussed, and Mr. Viogrande said he had not made those changes (T. p. 830). Respondent again admitted making the changes (T. p. 831). Also discussed at the meeting were reductions made in the reported values of a junkyard, town marinas, farm land, and property owned by friends of the respondent (T. p. 833). As a result of these discussions, petitioner Casazza concluded that respondent had acted improperly in reducing the values of those properties (T. p. 833).

The matter was discussed at meetings involving the petitioners, the First Selectman, the Board of Selectmen, Mr. Viogrande from the appraisal company, and the town attorney (T. pp. 3b–11b, 655–668, 1243, 1245–1247).[5] Two investigations were conducted with the knowledge and support of

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[3] Connecticut law permits only corrections of clerical errors to be made after a grand list is signed. Substantive changes are not permitted (C.G.S. Sec. 12-60; *National CSS, Inc. v. Stamford*, 95 Conn. 587, 594, 489 A.2d 1034 (1985); *Empire Estates, Inc. v. Stamford*, 147 Conn. 262, 264, 159 A.2d 812 (1960); *Reconstruction Finance Corporation v. Naugatuck*, 136 Conn. 29, 32, 68 A.2d 161 (1949); *Bridgeport Brass Company v. Drew*, 102 Conn. 206, 210, 128 A.2d 413 (1925).

[4] The Town of Westbrook has a form of government consisting of selectmen, town meeting, and board of finance (Connecticut State Register and Manual, p. 548 (1982)).

[5] In its opinion, the Connecticut Supreme Court refers to the "Town Council." There is no town council in Westbrook (Connecticut Register and Manual, p. 548, 549 (1982)). There is a *town counsel* with whom both petitioners met (T. pp. 655–668).

the First Selectman after consultation with the town attorney (T. pp. 655-663, 1238, 1239, 1244-1248). The town attorney advised having the second investigation as a result of the fact that the questions raised by the First Selectman in regard to the properties reviewed in the first investigation by the Connecticut Assessor's Association (CAA) were not addressed (T. pp. 1244-1248). Local newspapers contacted all the parties as well as the First Selectman and reported on the controversy (T. pp. 377-393, 404-408, 623, 698-700). The second investigation was conducted by two employees of the State Office of Policy & Management. In their conclusion, they also did not address certain questions raised concerning undervaluations by the respondent (T. pp. 345-347). They concluded that Sections 12-60 and 12-62 of the Connecticut General Statutes were not violated, but that respondent's method of erasing entries on property record cards to effect value changes is commonly regarded as an unacceptable practice (T. pp. 134, 214, 215). As a result of its dissatisfaction with the investigations, the Board of Selectmen of Westbrook hired an independent appraiser to assess some of the properties which it felt were undervalued (T. pp. 728-730). The appraiser's testimony was disallowed by the trial court (T. p. 1482).

Several aspects of the Connecticut Supreme Court's opinion are significant. First, the court declined to pass on the administrative agency (OPM) employees' interpretation of Connecticut General Statutes Sections 12-60 and 12-62 which resulted in the agency's conclusion that the statutes had not been violated. The court, in effect, decided that, whether or not the agency employees' interpretation was correct, the conclusion of the agency, based on that interpretation, was evidence of falsity of the petitioners' allegations (A. pp. 10a-11a).[6]

The agency employees concluded that, although Nordquist stated she was not aware of all the changes made when

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[6] The first investigation, conducted by three assessors from Connecticut Assessors Association, did not address the issue of the statutes at all (T. p. 661).

she signed the abstract, her oath and signature were sufficient to meet the requirements of Section 12-62 (T. pp. 282, 326, 327, 339). The agency also relied on the statement of the town's Tax Review Board chairman that the 27 changes made subsequent to the signing of the grand list were clerical changes made by the Board (T. p. 233). At trial, the chairman testified that some of those changes were not made by the Tax Review Board (T. p. 513).

The conclusion that Section 12-60 was not violated was based on the agency (OPM) employees' belief that all the changes made after the signing of the grand list were corrections of clerical errors (T. p. 233). Evidence at trial not only unequivocally demonstrated that the respondent changed values on these properties (T. pp. 68–70), but further that the OPM employee who testified for the respondent could not distinguish between clerical errors and substantive value changes (T. pp. 305–309). The witness from the appraisal company, also an assessor, testified to the distinction between clerical errors as opposed to changes in value:

> When there's a mistake in fact, either numbers, multiplication, division, size of lots, that is a factual mistake. There's no problem with that. You do correct that. As for opinion, what you do is, as the revaluation company, I make changes in opinion constantly but one is a demand that you change to adjust the facts. One of opinion is subjective. One is objective and one is subjective. . . .
>
> After the grand list is signed by the Board of Assessors or the assessor, he cannot make or they cannot make changes in opinion once that goes on there. And if there's a mistake in opinion, it has to go to the Board of Tax Review to review it. If not, the next step would be the courts. If there is a change due because of fact, wrong size of lots, or something like that, the assessor makes up a correction notice and he hands that into the Tax Collector making the change in the assessment (T. pp. 1417, 1418).

Petitioner Casazza stated that his refusal to retract his statements and his follow-up letter to OPM stemmed, in part, from his disagreement with the agency's interpretation of the statutes (T. pp. 861, 864). The Connecticut court's refusal to apply the standard of independent review to this evidence was based on its finding that the evidence pertained to falsity, not malice. The petitioners' reasonably-held beliefs with regard to their interpretation of the statutes was not considered.

In light of the Connecticut Supreme Court's assertion that it independently reviewed the record and concluded that the record supported the finding of the petitioners' actual malice (A. p. 12a), the following undisputed evidence not mentioned in the decision should be noted:

1. Respondent did make erasures and insert new figures on two to three hundred field sheets during the 1981 revaluation (T. pp. 54, 102a, 144a, 119, 327, 653, 654).

2. The petitioners were not involved in the changes of values on field sheets (T. pp. 56, 100a, 163, 327, 557, 560, 1434).

3. Respondent did not tell Nordquist of the changes before the grand list was signed (T. pp. 152-153, 184).

4. Respondent effected changes in values of 27 properties after the grand list was signed (T. pp. 68, 69).

5. Respondent had "no recollection" of telling either of the petitioners about the 27 changes to the grand list after it was signed (T. p. 189).

6. Respondent insisted that the assessed value of her husband's marina be reduced from $200,000.00 an acre to $100,000.00 an acre (T. pp. 1405-1406).

7. Respondent questioned and disputed values placed on certain properties by Mr. Viogrande of the appraisal company, including the marina owned by her husband. He conceded to

many of her valuations, including a reduction in the value of her husband's marina, because of the contractual requirement between his company and the town that the assessors' value controls. Neither of the petitioners acceded to these changes (T. pp. 1381-1385, 1395-1398, 1405-1406).

8. Mr. Viogrande refused to lower the value on the Woodstock Junkyard, and the Woodstock Junkyard was one of the properties for which a change was made by erasure after the 1981 grand list was signed (T. pp. 876, 1384).

9. Respondent unilaterally changed values on properties previously jointly reviewed by petitioners (T. pp. 1051-1054).

10. The chairman of the Board of Tax Review for Westbrook testified that there were changes made after the signing of the grand list that were not made by the Board of Tax Review (T. pp. 513, 525-527).

11. Subsequent to his refusal to sign the abstract on February 23, 1982, petitioner Casazza conducted his own independent review of approximately five thousand field cards for all properties in the Town of Westbrook (T. pp. 820, 823, 824). The results of Casazza's review are detailed in the appendix (A. pp. 51a-55a).

12. Respondent reduced or effected reductions in valuations of property in which her husband or family had a financial interest. Evidence produced at trial is set out in the appendix (A. pp. 51a-55a).

13. Erasing is an unacceptable assessing procedure during valuation. Evidence is set out in the appendix (A. p. 56a).

14. The Connecticut Assessors Association (CAA) investigation, initiated by the First Selectman, did not address the questions raised by the First Selectman and did not address the reduction in valuation of the marinas but only the per acre valuation of the marinas in relation to each other (T. pp. 657, 660, 661).

15. Respondent telephoned at least one of the CAA people involved in the investigation to explain her views to him (T. pp. 201, 202).

16. The conclusion of the CAA was disputed not only by petitioners but also by the First Selectman and by the town attorney (T. pp. 660–664, 1244–1248, 1256).

17. Petitioners met with Attorney John Larson, the town attorney, before any charges were brought to OPM, and the town attorney felt that the charges should be brought (T. pp. 1236, 1239–1242, 1244–1248, 1255, 1256).

18. Petitioners consulted with Mr. Viogrande, an assessor as well as an appraiser, prior to bringing any charges to OPM (T. pp. 1452, 1453).

19. Respondent wrote to the OPM investigator prior to the commencement of the investigation (T. pp. 288, 289; A. pp. 57a–58a). During the course of the investigation, the agency employee had a discussion with the First Selectman about how the report would affect Westbrook (T. pp. 278, 279).

20. The records of the 1971 decennial revaluation were not consulted during Casazza's review because there was a difference in valuation procedures between 1971 and 1981 (T. pp. 1158–1160). Casazza's testimony concerning this was supported by Mauro Bisaccia, the prior assessor for Westbrook, and Richard Viogrande, both men having had assisted in the 1971 Westbrook revaluation. These men testified that the technique for obtaining value were different in 1971 and 1981 (T. pp. 1338–1344, 1368–1374, 1385). There is not a shred of evidence to the contrary in the entire record.

The Court focused on ill will between the parties in concluding that there was clear and convincing evidence of actual malice (A. pp. 11a–15a).

With respect to Casazza, there is no evidence in the record that respondent's opinion concerning his reduction in January, 1982 led to any enduring animus. Evidence clearly established that the assessed value of Casazza's property was reduced by $2,300.00 on January 19, 1982 by independent action of the appraisal company (T. pp. 120a-125a, 818, 1387-1391, 1440-1441). Casazza did not learn of the reduction until January 19, 1982 (T. p. 123). The reduction was accomplished before Casazza had an opportunity to request it (T. pp. 120a-125a, 818, 1441, 1388, 1389). The witness from the appraisal company testified as to his reasons for the reduction on Casazza's property (T. pp. 1387-1389).[7] There was no evidence to support the court's conclusion that Casazza "remained away from the assessors office for approximately one month." The evidence was that around the end of January, he accompanied his wife to his daugher's house to stay with their grandson while his daughter was in California, and he did not return home until February 22, 1982 (T. p. 818). During that period of time, he stopped into the assessors' office at least once a week (T. pp. 131a, 132a). He testified that he did not review the books prior to February 23 because they were not in the assessors' possession when he was in the office. They were in the vault in the town clerk's office. In addition, they were not all available as some of them were still in the possession of the appraisal company (T. pp. 132a-136a).

In its opinion, the court stated that, from the evidence, the jury could reasonably have found ". . . After (petitioner Casazza's) return on February 23, 1982, he spent 'a good part of [the] time' investigating the office records with 'a view toward discovering any misconduct on the part of the plaintiff in her work as an assessor' " (A. p. 3a). There is absolutely no evidence in the entire record that Casazza's investigation was conducted "with a view toward discovering any misconduct on the part of the plaintiff in her work as an assessor." That phrase appears only in respondent's appellate brief (A. p. 59a).

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[7] Respondent filed a complaint with OPM regarding this matter in May, 1982, and OPM unequivocally exonerated Casazza (T. pp. 290-300).

With respect to petitioner Nordquist, the undisputed evidence is that there was no animus between her and the respondent until after respondent chided her for her concern over the respondent's erasures and changes in value on properties pointed out by petitioner Casazza (T. pp. 571, 572, 579).

Finally, the court stated in its opinion: ". . . The defendants conceded at oral argument that there had been no evidence underlying their accusations that the plaintiff had increased assessments upon properties owned by persons who were in her disfavor." The court failed to note that petitioners consistently denied in their pleadings, at trial, and at oral argument that they had ever accused respondent of increasing assessments upon properties owned by persons in her disfavor (T. pp. 106b–109b, 596, 856). The only evidence produced by respondent in this regard was the testimony of the OPM investigator who, on direct examination by respondent's counsel, equivocated and was unable to refresh his recollection sufficiently to state the names of any individuals whom the petitioners allegedly claimed the respondent disfavored. The only name he came up with on his own was that of an individual whose property the respondent had reduced in value. Respondent's counsel supplied him with names of a few people whose values had been increased (T. pp. 242–244).

The Connecticut Supreme Court, citing *Bose Corporation v. Consumers Union of United States, Inc.*, 466 U.S. 485, 515 fn.31, 104 S.Ct. 1949, 8 L.Ed.2d 502, reh. denied, 467 U.S. 1267, 104 S.Ct. 3561, 82 L.Ed.2d 863 (1984), opined that "the *Bose* court clarified that '[t]he independent review function is not equivalent to a 'de novo' review of the ultimate judgment itself, in which a reviewing court makes an original appraisal of all the evidence to decide whether or not it believes that judgment should be entered for the plaintiff.' " The court did not set out its interpretation of that footnote, nor did it explain how the standard of its independent review of evidence of actual malice was affected.

REASONS FOR GRANTING THE WRIT

1. Since this Court's decision in *Bose Corp. v. Consumers Union of U.S., Inc.*, 466 U.S. 485, 104 S.Ct. 1949, 8 L.Ed.2d 502, reh. denied, 467 U.S. 1267, 104 S.Ct. 3561, 82 L.Ed.2d 863 (1984), the law has been left in considerable confusion with regard to the precise scope of the independent review permitted an appellate court under the *New York Times v. Sullivan* standard. Although the *Bose* decision clearly states that "the rule of independent review assigns to judges a constitutional responsibility that cannot be delegated to the trier of fact, whether the fact finding function be performed in a particular case by a jury or by a trial judge," the application of the standard of independent review confronts the reviewing court with the difficult task of determining the extent to which it may reexamine and reject inferences which the jury may have utilized to support its finding of actual malice. In this case, there is no question that the respondent is a public figure and the undisputed facts relieve the appellate court of reaching the issue of the credibility of witnesses. This case presents an opportunity for clarification of the standard of independent review and its proper application in a defamation action in which the facts are readily discernible.

This Court's decision in *Bose* makes it clear that proof of actual malice and proof of falsity must occur in concert in order for certain forms of expression to be defamatory. What remains unclear is the extent to which the *Bose* decision absolves an appellate court of reviewing the trier's finding of fact with regard to the truth or falsity of the alleged utterances in a case such as this where the questions of falsity and actual malice are inextricably interwoven. The Connecticut Supreme Court so limited its view of the evidence as to ignore the undisputed evidence favorable to the petitioners concerning their state of mind and their reasonably held beliefs in the truth of their statements.

The Connecticut court's opinion demonstrates its failure to independently examine the facts so as to make an

independent constitutional judgment as required by *Bose v. Consumers Union, supra*, 466 U.S. 508, n.27. *Bose* compels an appellate court to review findings of fact " 'where a conclusion of law as to a federal right and a finding of fact are so intermingled as to make it necessary, in order to pass upon the federal question, to analyze the facts.' " *Id.* As footnote 27 flatly states:

> . . . The simple fact is that First Amendment questions of 'constitutional fact' compel this court's *de novo* review.

In declining to address the truth or falsity of the petitioners' accusations with regard to statutory violations, the Supreme Court of Connecticut failed to recognize that the questions of falsity and actual malice were clearly interrelated. Independent review of the question of actual malice necessitated a review of the interpretation of the Connecticut Statutes in issue. The court's refusal to review this evidence on the basis that it pertained to falsity, not malice, is a distinction without a difference in the context of this case. The court must look at " 'the statements which the principles of the First Amendment, as adopted by the Due Process Clause of the Fourteenth Amendment, protect' " [citations omitted] *Bose*, 466 U.S. at 508. In so doing the court would be compelled to address the concepts of falsity and malice so intertwined in this circumstance that they cannot be separated. This court noted in *Bose* that a finding of fact in some cases is inseparable from the principles through which it was deduced. At some point, the reasoning by which a fact is "found" crosses the line between the application of those ordinary principles of logic and common experience which are ordinarily entrusted to the finder of fact into the realm of a legal rule upon which the reviewing court must exercise its own independent judgment. Where the line is drawn varies according to the nature of the substantive law at issue. Regarding certain largely factual questions in some areas of the law, the stakes — in terms of impact on future cases and future conduct — are too great to entrust them finally to the judgment of the trier of fact.

The Connecticut Supreme Court's deference to an administrative agent's interpretation of sections 12-60 and 12-62, which was critical to the question of actual malice, delegates to the jury a constitutional responsibility which this Court has consistently held must be retained by the court. The trial court refused to entertain evidence which demonstrated petitioners' interpretation of the statutes and insistence that respondent had violated them was reasonable. The Connecticut Supreme Court failed to review the extensive evidence pertinent to the petitioners' state of mind and thereby failed to independently evaluate the finding of actual malice.

Had the court properly reviewed the evidence of actual malice, it would have been compelled by the rule in *St. Amant v. Thompson*, 390 U.S. 727, 731, 88 S.Ct. 1323, 20 L.Ed. 2d 262 (1968) to find that the petitioners had reasonable subjectively held beliefs in the truth of their accusations clearly sufficient to demonstrate that their statements were not made in bad faith, but were substantially true and made without malice.

The Connecticut Supreme Court's review of the facts demonstrates a wholesale disregard of those facts which were noted in the petitioners' brief, appendix, and reply brief which bear directly on their state of mind and the absence of malice.

2. The "legitimate and substantial interest" of the citizenry in the conduct of its public officials, acknowledged by this court in *Curtis Publishing Co. v. Butts*, 388 U.S. 130, 87 S. Ct. 1975, L.Ed. 2d (1967), would be best served by a requirement that allegedly defamatory statements of public officers about the conduct of their fellow public officials be fully and independently reviewed by the court rather than left to the vagaries of the jury process. This court has repeatedly emphasized the sanctity of First Amendment rights, particularly with regard to public figures, and the need to encourage "debate on public issues [that is] uninhibited, robust and wide open." *New York Times v. Sullivan*, 376 U.S. 254, 84 S. Ct. 910 L.Ed. 2d (1964).

The instant case presents an opportunity for this court to prevent the significant "chilling effect" of judicial misapplication of the mandate of *Bose* upon public officials such as the petitioners. Confusion concerning the extent to which scrutiny of factual findings and inferences drawn therefrom come within the scope of independent review serves to obstruct the constitutional rights of such public officials.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

RESPECTFULLY SUBMITTED,

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APPENDIX

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JOAN O. HOLBROOK *v.* TITUS J. CASAZZA
(12863)

JOAN O. HOLBROOK *v.* GALA H. NORDQUIST
(12864)

PETERS, C. J., HEALEY, SHEA, CALLAHAN and MORAGHAN, Js.

The plaintiff, the former tax assessor for the town of Westbrook, sought damages, in two separate actions, for allegedly defamatory statements made by the defendants, two members of the Westbrook board of assessors. In making the statements the defendants had accused the plaintiff of numerous improprieties in the performance of her duties as assessor. After the plaintiff had been exonerated of any wrongdoing by an assessors organization and by the state agency charged with the supervision of municipal assessors, she demanded a retraction, but the defendants refused to comply. On the defendants' appeals from the judgments against them, *held:*

1. The defendants' claim to the contrary notwithstanding, the trial court did not err in denying their motions to set aside the verdicts; the evidence presented was sufficient to support the jury's findings of falsity and actual malice.
2. Because the charge concerning the definition of actual malice requested by the defendants was, in substance, given, they could not prevail on

their claim that the trial court failed to relate the legal element of malice to the particular facts of the case.

3. The defendants' claim that the court erred in not instructing the jury that evidence of the administrative determinations exonerating the plaintiff was incompetent to establish that the plaintiff had not violated the law was unavailing, the defendants having failed to file proper requests on that charge or otherwise to raise it distinctly at trial.
4. The trial court did not abuse its discretion in denying the defendants' motion for a mistrial which was made after the plaintiff asked the Westbrook first selectman whether he had agreed to pay the defendants' counsel fees; this court was not convinced by the defendants' assertions that that court's cautionary instruction to disregard the question was an inadequate cure and that the suggestion of indemnification was so harmful that a fair trial could not be had.
5. Because certain evidence which was claimed by the defendants to have been improperly excluded was, in fact, later admitted, any error resulting from the trial court's initial ruling was rendered harmless.
6. The trial court did not err in refusing to set aside the award of damages as excessive.

Standard of appellate review of successful defamation action, discussed.

Argued April 8—decision released July 7, 1987

Action, in each case, to recover damages for allegedly defamatory statements made by the defendants, brought to the Superior Court in the judicial district of Middlesex, where the cases were consolidated and tried to the jury before *Barry, J.;* verdicts and judgments for the plaintiff, from which the defendants filed separate appeals. *No error.*

William F. Gallagher, with whom were *Evelyn A. Barnum* and, on the brief, *Steven J. Errante* and *David J. Peska,* for the appellants (defendants).

Roger Sullivan, for the appellee (plaintiff).

SHEA, J. The principal issue in these appeals is whether the statements of the defendants accusing the plaintiff of numerous improprieties in performing her duties as tax assessor in the town of Westbrook were made with actual malice. The plaintiff brought separate defamation actions against the defendants, mem-

NOTE: THESE PAGES (204 CONN. 337 AND 338) ARE IN REPLACEMENT OF THE SAME NUMBERED PAGES WHICH APPEARED IN THE CONNECTICUT LAW JOURNAL OF 7 JULY 1987.

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bers of the board of tax assessors for the town, seeking compensatory and exemplary damages for harm to her reputation, mental anguish, pain and suffering, public humiliation, and pecuniary loss alleged to have resulted from defamatory statements of the defendants. Following a trial in which the cases were consolidated, the jury returned verdicts against both defendants for an aggregate amount of $28,000 in general damages, $181,000 in special damages, and $77,477 in exemplary damages. While ordering remittiturs amounting to $3828 with respect to the awards of exemplary damages, the trial court denied the defendants' motions to set aside the verdicts against them, from which denials the defendants have appealed. We find no error.

From the evidence the jury could reasonably have found the following facts. In January, 1982, the defendant, Titus J. Casazza, obtained from an appraisal firm a reduction of $2300 in the appraised value of property belonging to him. Upon learning of this, the plaintiff, Joan O. Holbrook, then chairman of the board of assessors for the town, questioned Casazza about the use of his position as a member of the board of assessors in obtaining the reduction, and mentioned that Casazza's neighbors had not been accorded comparable treatment. Casazza responded angrily to a statement made by the plaintiff during that conversation "that it was quite unethical of him to use his office to further personal gain." Following this incident, Casazza remained away from the assessor's office for approximately one month. After his return on February 23, 1982, he spent "a good part of [the] time" investigating the office records with a view toward discovering any misconduct on the part of the plaintiff in her work as an assessor.

It was also on February 23, 1982, that an abstract compiling the 1981 decennial revaluations of real prop-

erty in Westbrook was completed. The plaintiff, the most experienced member of the board of assessors, had performed most of the revaluation work. Because the board was comprised of three persons, the plaintiff, the defendant Casazza, and the defendant Gala H. Nordquist, the signing of the abstract by the plaintiff and Nordquist, a majority of the board, validated it as the grand list for the town. Casazza, who refused to sign, subsequently persuaded Nordquist that she had endorsed a list that had been wrongfully altered by the plaintiff. Concerned about this criticism, Nordquist "stayed home for a day or two" until asked by the plaintiff to return. Upon returning, an argument occurred during which the plaintiff told Nordquist that she "had no business being an assessor." Nordquist became angry, was "reduced to tears," and immediately went to the office of Donald Morrison, first selectman for the town, and told him of Casazza's criticisms.

During a series of meetings in March, 1982, the defendants complained to Morrison, other selectmen, and the town council of misconduct on the part of the plaintiff. Among the accusations were allegations of improper field card erasures and unauthorized reductions in property values for relatives and friends. Morrison, with the consent of the parties, requested an investigation of the complaint by the Connecticut Association of Assessing Officers, which appointed a committee to conduct the investigation. After examining the records in the assessors' office and inspecting several of the relevant properties, the committee, on April 27, 1982, issued its report finding "no wrongdoing on the part of" the plaintiff.

On the following day the defendants submitted a further complaint to the office of policy and management (OPM), the state agency charged with the supervision of municipal assessors. See General Statutes § 12-1c. In summary, the defendants accused the plaintiff of:

(1) unilaterally changing assessed values in violation of General Statutes § 12-62;[1] (2) making unauthorized substantive changes in the 1981 grand list in violation of General Statutes § 12-60;[2] (3) illegally erasing several hundred property assessments; (4) reducing the assessments upon properties owned by friends and family members; and (5) increasing the assessments upon properties owned by people who were in her disfavor. With respect to several of their accusations, the defendants, before filing their complaint, did not seek an explanation from the plaintiff of the reasons for her actions. Additionally, with respect to their allegations of favoritism, the defendants did not "go back and consult the 1971 book to see what if any reductions were given in 1971." The defendants, furthermore, neither consulted an attorney nor sought the advice of any other assessors.

On June 22, 1982, the OPM released a committee report finding that all of the contested changes made by the plaintiff had been "appropriate," that no evidence existed of "partiality or bias," and therefore that the defendants' accusations were "invalid." At first selectman Morrison's request, however, the report included a comment that erasing, the method used by

[1] "General Statutes Sec. 12-62. PERIODIC REVALUATION OF REAL ESTATE. (a) Commencing October 1, 1978, the assessors of all towns, consolidated towns and cities and consolidated towns and boroughs shall, no later than ten years following the last preceding revaluation of all real property and every ten years after each such revaluation, view all of the real estate of their respective municipalities, and shall revalue the same for assessment and, in the performance of these duties, except in any municipality where there is a single assessor, at least two of the assessors shall act together, and all valuations shall be separately approved by a majority of the assessors. . . ."

[2] "General Statutes Sec. 12-260. CORRECTION OF CLERICAL ERROR IN ASSESSMENT. Any clerical omission or mistake in the assessment of taxes may be at any time corrected according to the fact by the assessors or board of tax review, and the tax shall be levied and collected according to such corrected assessment."

the plaintiff to correct field cards, while not illegal, was not the preferred method, which is "to draw a line through the value to be changed and enter the new value."

Casazza nevertheless filed another complaint with the supervisor of the OPM in which he repeated his previous accusations. The OPM declined to reopen its investigation. On September 22, 1982, the plaintiff mailed to the defendants a demand for retraction of their accusations, but the defendants refused to comply.

During the spring and summer of 1982, the news media provided extensive coverage of the controversy between the parties. The media detailed the charges of misconduct underlying the investigations of the plaintiff, and numerous articles featured quotations from Casazza. The impact of the defendants' accusations upon the plaintiff's reputation resulted in the plaintiff being dropped from consideration for the newly created position of single assessor for the town. Additionally, after having applied for assessor positions in fifty-two towns within a one hundred mile radius of Westbrook, at least three of which were actively seeking an assessor, the plaintiff received only one interview, which did not result in a job offer. The plaintiff, furthermore, felt compelled to move from Westbrook to an adjoining community.

The plaintiff brought the present actions in November, 1982. In these appeals from the judgments rendered by the trial court in accordance with verdicts for the plaintiff, the defendants claim: (1) that the evidence was insufficient to support findings of falsity and malice; (2) that the trial court erred in various aspects of its jury charge; (3) that the allusion by the plaintiff's counsel during trial to an indemnification of the defendants by the town warranted a mistrial; (4) that the court

erred in excluding evidence of the sale price of property owned by the plaintiff's husband; and (5) that the damage awards are excessive.

I

The rule set forth by the United States Supreme Court in *New York Times Co.* v. *Sullivan*, 376 U.S. 254, 279-80, 84 S. Ct. 710, 11 L. Ed. 2d 686 (1964), prohibits a public official from recovering damages for a defamatory falsehood unless he proves that the false "statement was made with 'actual malice'—that is, with knowledge that it was false or with reckless disregard of whether it was false or not." See also *St. Amant* v. *Thompson*, 390 U.S. 727, 730-31, 88 S. Ct. 1323, 20 L. Ed. 2d 262 (1968). Further, those who "are properly classed as public figures and those who hold governmental office may recover for injury to reputation only on clear and convincing proof that the defamatory falsehood was made with" such actual malice. *Gertz* v. *Robert Welch, Inc.*, 418 U.S. 323, 342, 94 S. Ct. 2997, 41 L. Ed. 2d 789 (1974). In this appeal the plaintiff concedes that, as a tax assessor, she "had substantial responsibility for the conduct of her office in establishing property values and therefore was a public official according to standards set by federal law." Cf. *New York Times Co.* v. *Sullivan*, supra (elected commissioner as public official); *Moriarty* v. *Lippe*, 162 Conn. 371, 294 A.2d 326 (1972) (patrolman); *Ryan* v. *Dionne*, 28 Conn. Sup. 35, 248 A.2d 583 (1968) (tax collector).

The jury affirmatively answered special interrogatories submitted by the court, expressly finding that (1) the defendants uttered and published defamatory statements about the plaintiff, and that, by clear and convincing evidence, such statements (2) were false and (3) were made with actual malice. The defendants first claim that the trial court erred in denying their motions

to set aside the verdict and render judgment notwithstanding the verdict because the verdict is not supported by the evidence.

A

We must preliminarily determine the proper standard of appellate review. Appellate courts ordinarily do not disturb the facts as found by a jury unless it appears that the evidence furnished no reasonable basis for the jury's conclusions. *Moriarty* v. *Lippe*, supra, 374; *Petrizzo* v. *Commercial Contractors Corporation*, 152 Conn. 491, 499, 208 A.2d 748 (1965). The evidence is given the most favorable construction to which it is reasonably entitled in support of the verdict. *Wochek* v. *Foley*, 193 Conn. 582, 587, 477 A.2d 1015 (1984); *Petrillo* v. *Bess*, 149 Conn. 166, 167, 179 A.2d 600 (1961); *Kerrigan* v. *Detroit Steel Corporation*, 146 Conn. 658, 660, 154 A.2d 517 (1959).

Where a defamation action has successfully been brought by a public official, however, the issues involve the demarcation between speech that is unconditionally guaranteed and speech that may legitimately be regulated. Cf. *Speiser* v. *Randall*, 357 U.S. 513, 525, 78 S. Ct. 1332, 2 L. Ed. 2d 1460 (1958). "In cases where that line must be drawn, the rule is that we 'examine for ourselves the statements in issue and the circumstances under which they were made to see . . . whether they are of a character which the principles of the First Amendment, as adopted by the Due Process Clause of the Fourteenth Amendment, protect.' *Pennekamp* v. *Florida*, 328 U.S. 331, 335 [66 S. Ct. 1029, 90 L. Ed. 1295 (1946)] . . . . We must 'make an independent examination of the whole record,' *Edwards* v. *South Carolina*, 372 U.S. 229, 235 [83 S. Ct. 680, 9 L. Ed. 2d 697 (1963)], so as to assure ourselves that the judgment does not constitute a forbidden intrusion on the field of free expression." *New York*

Times Co. v. *Sullivan*, supra, 285; cf. *New York* v. *Ferber*, 458 U.S. 747, 774 n.28, 102 S. Ct. 3348, 73 L. Ed. 2d 1113 (1982); *Hess* v. *Indiana*, 414 U.S. 105, 108–109, 94 S. Ct. 326, 38 L. Ed. 2d 303 (1973); *Miller* v. *California*, 413 U.S. 15, 25, 93 S. Ct. 2607, 37 L. Ed. 2d 419, reh. denied, 414 U.S. 881, 94 S. Ct. 26, 38 L. Ed. 2d 128 (1973); *Street* v. *New York*, 394 U.S. 576, 592, 89 S. Ct. 1354, 22 L. Ed. 2d 572 (1969).

In *Bose Corporation* v. *Consumers Union of United States, Inc.*, 466 U.S. 485, 104 S. Ct. 1949, 80 L. Ed. 2d 502, reh. denied, 467 U.S. 1267, 104 S. Ct. 3561, 82 L. Ed. 2d 863 (1984), the United States Supreme Court elaborated upon the "constitutionally based rule" of independent review. The court maintained that the rule preserves the "due regard" that is ordinarily given to the trial judge's opportunity to observe the demeanor of the witnesses. Id., 499–500. In a footnote, the *Bose* court clarified that "[t]he independent review function is not equivalent to a '*de novo*' review of the ultimate judgment itself, in which a reviewing court makes an original appraisal of all the evidence to decide whether or not it believes that judgment should be entered for plaintiff." Id., 514 n.31. The court noted that, apart from the finding of actual malice, to which the rule of independent review applies, the other findings of fact in a defamation case are properly tested under the clearly erroneous standard of review. Id.; see also *Time, Inc.* v. *Pape*, 401 U.S. 279, 284, 91 S. Ct. 633, 28 L. Ed. 2d 45, reh. denied, 401 U.S. 1015, 91 S. Ct. 1248, 28 L. Ed. 2d 552 (1971); cf. *Tavoulareas* v. *Piro*, 817 F.2d 762 (D.C. Cir. 1987). As we have stated, it is the finding of actual malice by clear and convincing proof that impels a defamatory falsehood uttered against a public official across the constitutional threshold and into the limited category of "unprotected" speech.

B

We initially dispose of the defendants' claim that the evidence was insufficient to support the findings by the jury in their respective cases that the defamatory statements were false. We note that in these appeals the defendants challenge such findings only in respect to their statements that the plaintiff improperly changed assessments in the 1981 grand list in violation of General Statutes §§ 12-62 and 12-60. Moreover, the defendants conceded at oral argument that there had been no evidence underlying their accusations that the plaintiff had increased assessments upon properties owned by persons who were in her disfavor.

The jury returned a general verdict for the plaintiff while answering affirmatively the special interrogatory whether "the plaintiff proved by clear and convincing evidence the falsity of *any* of the defamatory statements." (Emphasis added.) This court has recognized that a general verdict for one party raises a presumption that the jury found every issue in favor of " 'the prevailing party.' " *Alfano* v. *Insurance Center of Torrington,* 203 Conn. 607, 613, A.2d (1987); *Finley* v. *Aetna Life & Casualty Co.,* 202 Conn. 190, 202, 520 A.2d 208 (1987); *Colucci* v. *Pinette,* 185 Conn. 483, 489–90, 441 A.2d 575 (1981). Thus, we must uphold the jury's findings of falsity if the evidence is sufficient in respect to any of the defamatory statements made by the defendants. Applying the ordinary standard of appellate review, we conclude that testimony regarding the April 27, 1982 determination of the Association of Assessing Officers and the June 22, 1982 OPM committee report, both of which declared the defamatory accusations untrue, furnished a reasonable basis for the jury's findings of falsity. The general verdict rule makes it unnecessary for us to undertake a sepa-

rate analysis concerning the defendants' particular accusations that the plaintiff violated §§ 12-62 and 12-60.[3]

We next "independently review" the record to determine whether sufficient evidence supports the jury's findings of actual malice. A statement made with actual malice, under the rule of *New York Times Co.*, is made with knowledge of its falsity or with reckless disregard of whether it is false. See *Beckley Newspapers Corporation* v. *Hanks*, 389 U.S. 81, 82–83, 88 S. Ct. 197, 19 L. Ed. 2d 248 (1967). A merely negligent misstatement of fact about a public official retains the constitutional protection afforded free expression. See *Rosenbloom* v. *Metromedia*, 403 U.S. 29, 50, 91 S. Ct. 1811, 29 L. Ed. 2d 296 (1971); *Rosenblatt* v. *Baer*, 383 U.S. 75, 83–84, 86 S. Ct. 669, 15 L. Ed. 2d 597 (1966). Further, proof that a defamatory falsehood has been uttered

[3] In these appeals the defendants, in their joint brief, have inserted a claim that the trial court erred in refusing to submit to the jury a series of interrogatories that had been proposed by the defendant Casazza. See Practice Book § 312. It is within the reasonable discretion of the trial court whether to submit pertinent interrogatories to the jury. *Merrill Lynch, Pierce, Fenner & Smith, Inc.* v. *Cole*, 189 Conn. 518, 527, 457 A.2d 656 (1983); *Freedman* v. *New York, N.H. & H. R. Co.*, 81 Conn. 601, 612, 71 A. 901 (1909). We have recognized, however, that a party has the right to avoid the implication of a general verdict by seeking from the jury answers to appropriate interrogatories. *Ubysz* v. *DiPietro*, 185 Conn. 47, 61–62, 440 A.2d 830 (1981); *Callahan* v. *Jursek*, 100 Conn. 490, 493, 124 A. 31 (1924). The interrogatories proposed by the defendant Casazza would not have involved consideration of each of the accusations that had been made by the defendants. Most notably, no interrogatory sought a jury finding with respect to the accusation that the plaintiff had been responsible for several hundred illegal erasures on the field card records. Therefore, even if the jury's answers to all of the proposed interrogatories had favored the defendants, such results would not necessarily have been in contradiction to a verdict for the plaintiff. Moreover, the failure on the part of Casazza to take exception to the court's refusal, or to the three special interrogatories prepared and submitted to the jury by the court, indicates Casazza's satisfaction at the time that the three interrogatories were adequate to protect his interests. Thus, we conclude that the trial court did not abuse its discretion in refusing to submit the proposed interrogatories to the jury.

"with bad or corrupt motive" or with an intent to inflict harm will not be sufficient to support a finding of actual malice; *Beckley Newspapers Corporation* v. *Hanks*, supra; *Henry* v. *Collins*, 380 U.S. 356, 357, 85 S. Ct. 992, 13 L. Ed. 2d 892 (1965); although such evidence may assist in drawing an inference of knowledge or reckless disregard of falsity. 3 Restatement (Second), Torts § 580A, comment d.

Applying these principles, we are persuaded that the proof presented to show actual malice does possess the convincing clarity that the constitutional standard demands. With respect to Nordquist, the record indicates that, in making several accusations, she relied entirely upon Casazza's advice to her and made no effort independently to verify facts. The following transcript portion, for example, records the examination of Nordquist by counsel for the plaintiff regarding the letter of complaint submitted to the OPM following the April 27, 1982 exoneration of the plaintiff by the Association of Assessing Officers:

"Q. And in that letter, you accused Joan Holbrook of violating two Statutes having to do with assessing?

"A. Yes.

"Q. Statute 12-62 and Statute 12-60, is that correct?

"A. Yes.

"Q. Had you ever read either one of those statutes before you signed that letter?

"A. The first one where it says the changes were made unilaterally, I didn't read the Statute, because I figured this was what it was all about.

"Q. Isn't it true that you never read either one of those Statutes before you made those charges?

"A. Yes sir.

"Q. And isn't it also true that you have never read those Statutes?

"A. Yes.

"Q. Not since the charges were made, you've never resorted to the Statutes?

"A. No.

"Q. And before you sent that charge against Joan Holbrook to O.P.M., you didn't consult a lawyer, did you, and ask his advice about the meaning of the Statutes?

"A. No.

"Q. And you didn't consult any other assessor?

"A. No.

"Q. The only person you consulted with was Titus Casazza?

"A. There were other people that were involved.

"Q. The only person you consulted with in making the charges was Titus Casazza, isn't that true?

"A. Yes sir."

The jury could properly have concluded that a reasonably prudent person in the position of Nordquist, upon learning of the initial exoneration of the plaintiff, would have sought evidence corroborative of Casazza's perspective prior to publishing the subsequent accusations of misconduct in the complaint to the OPM. Viewed in the light of the following additional factors, Nordquist's disregard of the probable falsity of her accusations crosses the threshold from negligence to recklessness. First, the circumstances under which Nordquist embarked upon publishing her claims of wrongdoing suggest the presence of animus. Upon being told by the plaintiff that she "had no business

being an assessor," Nordquist, angered and "reduced to tears," immediately published her accusations to Morrison, the town's first selectman. Second, Nordquist refused to retract her statements after learning of a second official exoneration of the plaintiff, this time by the OPM.[4] A refusal to retract a statement that has been demonstrated to be false and defamatory "might be relevant in showing recklessness at the time the statement was published." 3 Restatement (Second), Torts § 580A, comment d; *Golden Bear Distributing Systems of Texas, Inc.* v. *Chase Revel, Inc.*, 708 F.2d 944, 950 (5th Cir. 1983). We conclude that the failure of Nordquist to investigate the facts, seek advice from other knowledgeable persons, or publish a retraction after learning of the June 22, 1982 OPM committee report, together with the ill will that seemingly spurred the initial publication of her defamatory statements, evidenced "the high degree of awareness of their probable falsity demanded by *New York Times* . . . ." *Garrison* v. *Louisiana*, 379 U.S. 64, 74, 85 S. Ct. 209, 13 L. Ed. 2d 125 (1964).

The record similarly supports the finding of actual malice with respect to Casazza. Ill will clearly developed when the plaintiff challenged Casazza about the propriety of using his official position as an assessor in obtaining a reduction in the value of his own property. Like Nordquist, Casazza did not check the avail-

[4] The transcript indicates that the examination of Nordquist soon turned to the subject of the plaintiff's demand for retraction:

"Q. Now, after spending a month or a month and a half on their investigation, the [OPM] issued a report in which they exonerated Mrs. Holbrook of the charges that you had made, isn't that true?

"A. Yes.

"Q. And did you thereafter receive a letter from Mrs. Holbrook's attorney . . . in which he called upon you to make a public retraction of the charges that you had published against Mrs. Holbrook?

"A. Yes, I did. . . .

"Q. And you refused to retract your accusation, isn't that also true?

"A. Yes."

able records of the 1971 decennial revaluation, consult an attorney, or seek the advice of other assessors about the validity of his accusations. Following the June 22, 1982 OPM committee report determining that the accusations against the plaintiff were invalid, Casazza not only refused to publish a retraction, but republished his statements in a further complaint filed with the supervisor of the OPM, and also at an interview with a reporter for the Middletown Press, which resulted in an article that elaborated upon the claimed misconduct of the plaintiff. Such evidence supports the conclusion that Casazza recklessly disregarded the probable falsity of his publications. See *Rosenbloom* v. *Metromedia,* supra, 56; *St. Amant* v. *Thompson,* supra, 731.

Because we determine that the evidence was sufficient to support the jury's findings of falsity and malice, we hold that the trial court did not err in denying the defendants' motions to set aside the verdict and render judgment notwithstanding the verdict.

II

The defendants next claim that the trial court erred in its charge to the jury because the instructions (1) failed adequately to relate the legal element of malice to the particular facts of this case, and (2) did not ask the jury independently to determine whether the plaintiff had made illegal unilateral or substantive changes in the grand list. We disagree.

A

The court devoted a substantial portion of its jury instructions to the issue of malice. The following excerpts are illustrative. "To recover even for a false, defamatory statement, a public official such as the plaintiff must establish that the statement was made with actual malice; that is, with knowledge that the statement was false or with a reckless disregard for

its truth or falsity . . . . You are by now familiar with the facts in this case. Mrs. Holbrook has several claims she has sought to prove. That the defendants have uttered and published a variety of statements as are outlined in the pleadings that I have referred you to read and to the testimony that you have heard. Let me state these issues again. To establish her claims against a defendant, Mrs. Holbrook must prove three essential elements. . . . Third, that a defendant published an actionable and false, defamatory statement with actual malice; that is, knowing it was false or seriously doubting its truth. And that element requires proof again by the plaintiff by clear and convincing evidence. . . . Actual malice is a legal term which you must not confuse with more common definitions of malice; such as, ill will or hatred. The plaintiff cannot prevail merely by proving that the defendant was motivated by ill will, prejudice, hostility, hatred, contempt or even a desire to injure."

Upon receiving a request from the jury for an explanation of the term "malice" "as applied to this case in writing as clearly as possible in lay terms," the court responded: "In this case for a defendant, for the defendant to have acted with malice means that he must've uttered and published a defamatory statement with knowledge that the statement was false or with a reckless disregard of any evidence or circumstances of its probable falsity." The record indicates that the jury foreman appeared satisfied with this definition, to which the defendants took an exception only on the ground that the court had not restated the burden of proof.

We have stated that the test of a court's charge "is not whether it is as accurate upon legal principles as the opinions of a court of last resort but whether it fairly presents the case to the jury in such a way that injustice is not done to either party under the established rules

of law." *Atlantic Richfield Co.* v. *Canaan Oil Co.*, 202 Conn. 234, 240, 520 A.2d 1008 (1987); *Borsoi* v. *Sparico*, 141 Conn. 366, 371, 106 A.2d 170 (1954). Because the charge was correct in law and ample for the guidance of the jury, it met the required test. See *State* v. *Marra*, 195 Conn. 421, 443, 489 A.2d 350 (1985); *DeCarufel* v. *Colonial Trust Co.*, 143 Conn. 18, 20–21, 118 A.2d 798 (1955).

We note that the charge requested by the defendants in respect to malice was no more fact-specific than the charge actually given on that issue, to which the defendants took no exception. The defendants requested the following language: "Even if you have found on the basis of the evidence that the plaintiff has proven by clear and convincing evidence, that is, to a high probability, that the statements made about her were false, she is not entitled to prevail in this action unless you also find that the plaintiff has proven to you by clear and convincing evidence that at the time the defendant made any or each such false statement, he either knew that the statement was not true, or made the statement with reckless disregard for whether it was true or not . . . . By reckless disregard for the truth or falsity of a defamatory statement, I mean that in order to find for the plaintiff on this basis, you must be convinced that when the defendant made the statements in question, he possessed a high degree of awareness of their probable falsity." Because the charge requested was in substance given, the defendants cannot prevail in their attack upon the generality of the language used therein. *Atlantic Richfield Co.* v. *Canaan Oil Co.*, supra, 241; *Lowell* v. *Daly*, 148 Conn. 266, 269, 169 A.2d 888 (1961).

B

We are similarly unpersuaded by the defendants' claim that the court erred in failing to instruct the jury

that evidence of the administrative determinations exonerating the plaintiff "was incompetent to establish that the plaintiff had not violated [General Statutes §§ 12-62 and 12-60]." The defendants took no exception to this omission from the charge, but rely upon the failure of the court to charge in accordance with their request. We note that the defendants have not claimed error in the admission of testimony regarding those administrative rulings.

Section six of the defendants' requests to charge consisted of four paragraphs dealing with the defendants' accusations that the plaintiff had made changes in the grand list that were unilateral, in violation of § 12-62, and that were substantive, in violation of § 12-60. The request stated, in respect to each alleged statutory violation, that, if the plaintiff has not proved falsity by clear and convincing evidence, "you must return a verdict for the defendant."

Ordinarily there can be no error in a court's rejection of a request to charge that clearly does not meet the requirements of Practice Book § 318. See *Merrill Lynch, Pierce, Fenner & Smith, Inc.* v. *Cole,* 189 Conn. 518, 527 n.2, 457 A.2d 656 (1983). That rule, which is entitled "Form and Contents of Requests," provides in part that requests to charge the jury "shall be in separate and numbered paragraphs, each containing a single proposition of law clearly and concisely stated with the citation of authority upon which it is based . . . ." Practice Book § 318; see generally *Colucci* v. *Pinette,* 185 Conn. 483, 486–87 n.2, 441 A.2d 574 (1981). This request does not meet these criteria. We have stated that a request containing more than one principle of law violates the rule and was properly refused. See, e.g., *Terminal Taxi Co.* v. *Flynn,* 156 Conn. 313, 320, 240 A.2d 881 (1968); W. Maltbie, Connecticut Appellate Procedure §§ 109, 110.

Additionally, the request to charge included the instruction that, unless the plaintiff has proved the falsity of either alleged statutory violation, "you must return a verdict for the defendant." A verdict for the plaintiff would have been proper, however, had she prevailed in respect to any one of the several claimed defamatory accusations. Because the request was therefore an inaccurate statement of the applicable law, the court was not in error in denying the request to charge. See *State* v. *Chetcuti,* 173 Conn. 165, 171, 377 A.2d 263 (1977); *State* v. *Green,* 172 Conn. 22, 25, 372 A.2d 133 (1976).

In any event, we note that, while the defendants claim error in the court's failure to instruct the jury that evidence of the administrative determinations "was incompetent to establish that the plaintiff had not violated [§§ 12-62 and 12-60]," their request did not include such an instruction. Because the defendants took no exception on the point, this claim was "not distinctly raised at trial"; *State* v. *Rogers,* 199 Conn. 453, 461, 508 A.2d 11 (1986); and we are relieved of any obligation to consider it further. Practice Book § 4185; *Atlantic Richfield Co.* v. *Canaan Oil Co.,* supra, 241; *Kosko* v. *Kohler,* 176 Conn. 383, 389, 407 A.2d 1009 (1978).

III

A further contention of the defendants is that the trial court erred in refusing to declare a mistrial when the plaintiff's counsel asked Morrison, first selectman of the town, whether he had agreed to pay the defendants' counsel fees. The defendants' objection at trial, renewed on appeal, was that the question "has the effect of leading the jury to believe that [the defendants] are protected by the Town, that their Attorneys' fees are being paid by the Town, and the inference that's going to be drawn by the jury is that the Town

will in effect pay any judgments in this case . . . ." Counsel for the plaintiff responded that the purpose of his question was "to show that the witness is not a neutral and detached person with whom I cannot ask leading questions, but that he is in fact a hostile witness and that his interests are aligned with [the defendants]." While denying the motion for mistrial, the court sustained the objection, and then instructed the jury to disregard the question.

The defendants argue that "[t]he inference that defendants would be indemnified by the Town may be likened to placing information regarding a defendant's insurance coverage before a jury." We have stated that the rule excluding evidence that a defendant carries liability insurance is not without exception. See *Magnon* v. *Glickman*, 185 Conn. 234, 242, 440 A.2d 909 (1981); *Gigliotti* v. *United Illuminating Co.*, 151 Conn. 114, 122, 193 A.2d 718 (1963). " 'It is usually held that it is permissible for plaintiff's counsel, when acting in good faith, to show the relationship between a witness and defendant's insurance company where such evidence tends to show the interest or bias of the witness and affects the weight to be accorded his testimony.' " *Magnon* v. *Glickman*, supra; annot., 4 A.L.R.2d 761, 779.

The trial court has great latitude in ruling on motions for mistrial. *State* v. *Nowakowski*, 188 Conn. 620, 624, 452 A.2d 938 (1982); *State* v. *Perez*, 181 Conn. 299, 310, 435 A.2d 334 (1980). The question before us on appeal is not primarily whether the question posed to Morrison was proper, but whether the trial court, in refusing to grant a mistrial on account of an unanswered question that the jury was instructed to disregard, so far exceeded or abused the discretion committed to it as to warrant our granting a new trial. *State* v. *Couture*, 194 Conn. 530, 562, 482 A.2d 300 (1984), cert. denied, 469 U.S. 1192, 105 S. Ct. 967, 83 L. Ed. 2d

971 (1985); *State* v. *Laudano,* 74 Conn. 638, 646, 51 A. 860 (1902). The general rule is that a mistrial is granted only where it is apparent to the court that, as a result of some occurrence during trial, a party has been deprived of the opportunity for a fair trial. *State* v. *Gaston,* 198 Conn. 490, 495, 503 A.2d 1157 (1986); *State* v. *DeMatteo,* 186 Conn. 696, 703, 443 A.2d 915 (1982).

Even assuming that the question posed to Morrison was improper, we are not convinced by the defendants' bare assertions that "the court's cautionary instruction was an inadequate cure," and that "the suggestion of indemnification [was] so harmful that a fair trial could not be had." Accordingly, we hold that the court did not abuse its discretion in denying the defendants' motion for a mistrial.

IV

The defendants next claim that the court erred in excluding evidence regarding the sale price of property owned by the plaintiff's husband. The defendants argue that the knowledge they possessed about the sale of the "Patchoug Marina," which occurred some time after the assessment date at a price "substantially higher than the assessed value placed on it by the plaintiff in the 1981 revaluation," was crucial on the issue of actual malice.

It is true that the trial court sustained the plaintiff's objection to "any inquiry of this witness [viz., the defendant Casazza] about the sale and the sales price [as] irrelevant to the issues at hand . . . . " It is clear, however, that the defendants sought to introduce such evidence on the issue of falsity, and not on the issue of malice. The plaintiff's counsel argued at trial that the evidence was inadmissible to show lack of malice on the part of Casazza because he "did not have this information in his possession at the time that he made

the accusations." Counsel for Casazza subsequently stated to the court that the evidence of the sale price of the marina "really goes to the truth of the matter," and that "it should be admissible because the fact that something is true, even if that doesn't come to light until after the statement is made, is still very pertinent." We agree with the defendants' claim at trial that evidence of the sale was relevant to the issue of whether there had been an underassessment of the property by the plaintiff, as the defendants had charged. We agree with the plaintiff, however, that, in the absence of a showing that the defendants were aware of this sale when they made their remarks concerning the plaintiff's exercise of favoritism, the evidence was irrelevant for the purpose of proving the lack of malice.

The defendants have abandoned on appeal the valid ground for the admissibility of the proffered evidence relied upon at trial probably because they recognize that ultimately they suffered no harm from the erroneous ruling. The record indicates that evidence of the sale price was indeed introduced by the defendants during the direct examination of Anthony Viagrande, an officer of the appraisal firm that had assisted in the 1981 revaluation. Viagrande testified several times that the plaintiff had informed him that her husband had sold the marina for $1,200,000. Because the evidence claimed to have been improperly excluded was in fact later admitted, any error resulting from the court's initial ruling was rendered harmless. See *Allen* v. *Nissley,* 184 Conn. 539, 545–46, 440 A.2d 231 (1981).

V

The defendants' final claim is that the court erred in refusing to set aside the damage awards as excessive. The defendants submit that these excessive awards resulted from the court's failure adequately to instruct the jury on the standard of proof to be borne

by the plaintiff with respect to the elements of falsity and actual malice. We are not persuaded that the awards were excessive.

We find no deficiency in the charge given to the jury by the trial court in regard to the plaintiff's burden of proof. The court instructed that the plaintiff "has a more demanding and different burden of proof than preponderance of the evidence on two elements of her claim. She must demonstrate one, that any defamatory statement was false, and two, a defendant acted with actual malice, and both of those claims must be proved by what we call clear and convincing evidence. Clear and convincing evidence is a more exacting standard than proof by a preponderance of the evidence. Clear and convincing proof leaves no substantial doubt in your mind. It is proof that establishes in your mind not only that the proposition at issue is probable, but also that it is highly probable. . . . On the other hand, clear and convincing evidence is not as high a standard as the burden of proof applied in criminal cases, which is proof beyond a reasonable doubt. It is enough that the plaintiff in this case establishes falsity or actual malice beyond any substantial doubt. She does not have to dispel every reasonable doubt. . . .

"To establish her claims against a defendant, Mrs. Holbrook must prove three essential elements. First, that the challenged statements are defamatory of her in some actionable way and were uttered and published by a defendant. That issue must be proved by her by a preponderance of the evidence. Second, that any actionable, defamatory statement is false in some material respect. That burden is by clear and convincing evidence. Third, that a defendant published an actionable and false, defamatory statement with actual malice; that is, knowing it was false or seriously doubting its truth. And that element requires proof again by the plaintiff by clear and convincing evidence."

These jury instructions conformed to the defendants' requests to charge, are sufficiently correct in law;[5] see *Gertz* v. *Robert Welch, Inc.*, supra, 342; *Rosenbloom* v. *Metromedia*, supra, 30; *Dacey* v. *Connecticut Bar Assn.*, 170 Conn. 520, 534–38, 368 A.2d 125 (1976); and furnished adequate guidance for the jury. See generally *Atlantic Richfield Co.* v. *Canaan Oil Co.*, supra, 240. Therefore, we cannot agree with the defendants that such instructions misled the jury into awarding excessive damages.

We next examine the damage awards returned by the jury. The jury returned a verdict against Casazza for $21,000 in general damages, $135,750 in special damages, and $58,111 in exemplary damages. Against the defendant Nordquist the jury returned a verdict for $7000 in general damages, $45,250 in special damages, and $19,366 in exemplary damages. The court ordered remittiturs on the exemplary damages awards in the amounts of $2874 and $954 in regard to Casazza and Nordquist, respectively. Thus, the defendant Casazza was responsible for 75 percent, and the defendant Nordquist for 25 percent, of the aggregate damages awarded to the plaintiff.

"Assessment of damages is peculiarly within the province of the jury and their determination should be

[5] We note that the propriety of that portion of the jury charge placing the burden of proving falsity upon the plaintiff by clear and convincing evidence is not at issue in this appeal. "At common law, prior to the application of constitutional standards in the area of libel and slander, the truth of the defamatory statement was an affirmative defense for the defendant to prove. Restatement of Torts §§ 518, 613 (2) (1938). Although falsity was an element of a cause of action for defamation, id. at § 558, once a statement was shown to be defamatory, falsity was presumed. Prosser, Torts § 116 (4th Ed. 1971). . . . The language of *New York Times Co.* v. *Sullivan*, 376 U.S. 254, 84 S. Ct. 710, 11 L. Ed. 2d 686 (1964), and later cases makes clear that the burden of demonstrating the falsity of the defamatory statement rests on the plaintiff when the malice standard applies." *Wilson* v. *Scripps-Howard Broadcasting Co.*, 642 F.2d 371, 374–75 (6th Cir. 1981).

set aside only when the verdict is plainly excessive and exorbitant." *Wochek* v. *Foley,* 193 Conn. 582, 586, 477 A.2d 1015 (1984); *Szivos* v. *Leonard,* 113 Conn. 522, 525, 155 A. 637 (1931). "The only practical test to apply to a verdict is whether the award of damages falls somewhere within the necessarily uncertain limits of fair and reasonable compensation in the particular case, or whether the verdict so shocks the sense of justice as to compel the conclusion that the jury were influenced by partiality, prejudice, mistake or corruption. *Briggs* v. *Becker,* 101 Conn. 62, 66, 124 A. 826 [1924]." *Slabinski* v. *Dix,* 138 Conn. 625, 629, 88 A.2d 115 (1952). Evidence offered at trial relevant to damages must be reviewed in the light most favorable to sustaining the verdict. See *Wochek* v. *Foley,* supra, 587; *Gorczyca* v. *New York, N.H. & H. R. Co.,* 141 Conn. 701, 703–704, 109 A.2d 589 (1954).

The exemplary damages awards in the present cases were properly limited to attorneys' fees, which were based on a one third contingency fee agreement and costs. See *Kenny* v. *Civil Service Commission,* 197 Conn. 270, 277, 496 A.2d 956 (1985); *Alaimo* v. *Royer,* supra, 42; see also *Gertz* v. *Robert Welch, Inc.,* supra, 348–50. Apart from these awards, the plaintiff received a verdict for an aggregate amount of $28,000 in general damages and $181,000 in special damages. There was testimony at trial from Gary Crakes, an economist, that the plaintiff had sustained a "total net discounted loss" of $181,571. The plaintiff sought damages based not only upon pecuniary loss, but also public humiliation, mental anguish, and pain and suffering. An award of such general damages cannot have been the product of precise calculations and is given considerable deference by a reviewing court. See *Campbell* v. *Gould,* 194 Conn. 35, 42, 478 A.2d 596 (1984).

It is clear that, under these circumstances, the awards of damages fall "somewhere within the neces-

sarily uncertain limits of fair and reasonable compensation," and may be seen as reasonably related to the evidence adduced at trial. "The trial court's refusal to set aside the verdict is entitled to great weight and every reasonable presumption should be given in favor of its correctness." *Katsetos* v. *Nolan*, 170 Conn. 637, 656, 368 A.2d 172 (1976); see *Herb* v. *Kerr*, 190 Conn. 136, 139, 459 A.2d 521 (1983). Accordingly, we find no error in the refusal of the trial court to set aside the damage awards as excessive.

There is no error.

In this opinion the other justices concurred.

NO. 12863/12864

JOAN O. HOLBROOK : SUPREME COURT
VS
TITUS J. CASAZZA
: STATE OF CONNECTICUT
JOAN O. HOLBROOK
VS
GALA H. NORDQUIST : JULY 28, 1987

ORDER

THE MOTION OF THE DEFENDANTS TITUS J. CASAZZA AND GALA H. NORDQUIST FILED JULY 17, 1987, FOR REARGUMENT, HAVING BEEN PRESENTED TO THE COURT, IT IS HEREBY O R D E R E D DENIED.

BY THE COURT,

/s/ Carolyn Cunha Ziogas
Assistant Clerk — Appellate

NOTICE SENT: 7/28/87
GALLAGHER & GALLAGHER
LYNCH, TRAUB, KEEFE & SNOW
PESKA, SIPPLES & MUNRO
SULLIVAN & DONEGAN
HON. DAVID M. BARRY
CLERK, SUPERIOR COURT, MIDDLESEX
38546
REPORTER OF JUDICIAL DECISIONS

DOCKET NO. 82 0038546S	: SUPERIOR COURT
	: JUDICIAL DISTRICT OF
JOAN O. HOLBROOK,	: MIDDLESEX
v.	: AT MIDDLETOWN
TITUS J. CASAZZA,	: June 10, 1985

DEFENDANT'S PROPOSED PARTIAL REQUESTS TO CHARGE

Pursuant to Section 318 of the Practice Book, defendant hereby submits his partial requests to charge the jury in this action.

1. The plaintiff in this action claims that the defendant made various statements about her conduct as a Tax Assessor in the Town of Westbrook which were false, and which resulted in injury to her reputation. I will now instruct you as to what the plaintiff must prove in order that the defendant be held liable for any damages which the plaintiff may have shown that she suffered from the defendant's statements.

2. The statements made by the defendant concerning the plaintiff were in relation to her actions as a Tax Assessor in the Town of Westbrook. A tax assessor is a public official. *Ocala Star-Banner Co. v. Damron*, 401 U.S. 295, 299 (1971). Statements made about the official conduct of a public official are entitled to a high level of protection under our Constitution. *New York Times Co. v. Sullivan*, 376 U.S. 254, 279-280, (1964).

3. Specifically, in order for the plaintiff to establish any liability on the part of the defendant, she must prove a number of things to you, and must prove them with convincing clarity. *New York Times Co. v. Sullivan, supra*, 285-286; *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 342, (1974); *Dacey v. Connecticut Bar Association*, 170 Conn. 520, 535, (1976). The standard of "convincing clarity," or "clear and convincing evidence," is a higher and more rigorous standard of proof than is generally required in civil cases. In order for the plaintiff to

prove anything to you by clear and convincing evidence, you must be satisfied to a high degree of probability of the truth of the proposition sought to be proved. *Dacey v. Connecticut Bar Association, supra,* 537; *McCormick on Evidence,* 2nd Ed., § 340, p.796. I will now list and discuss what the plaintiff must prove to you by clear and convincing evidence before she may establish any liability on the part of the defendant.

4. First, the plaintiff must prove by clear and convincing evidence that the statements made about her by the defendant, as the evidence has established the content of those statements, were false. *New York Times Co. v. Sullivan, supra,* 279-280; *Garrison v. Louisiana,* 379 U.S. 64, 74 (1964); *Rosenblatt v. Baer,* 383 U.S. 75, 84 (1966); *Wilson v. Scripps-Howard Broadcasting Co.,* 642 F.2d 371, 375, (6th Cir., 1981), *cert. granted,* 454 U.S. 962, *appeal dismissed,* 454 U.S. 1130, (1981); *Goodrich v. Waterbury Republican-American,* 188 Conn. 107, 112, n.6 (1982). The defendant is under no burden of establishing that the statements made about the plaintiff were true. I should note here that the "truth" I am speaking of does not require you to believe in the literal truth of each statement made by the defendant. It is sufficient, instead, if you find that the main charge, or gist, of each such statement is substantially true, *or* that the plaintiff has failed to establish by clear and convincing evidence that the main charge, or gist, of each such statement is false. *Goodrich v. Waterbury Republican-American, Inc.,* 188 Conn. 107, 112-113; (1982); *Strada v. Connecticut Newspapers, Inc.,* 193 Conn. 313, 321-322. Thus, as to the statements complained of by the plaintiff, should you not be satisfied to a high level of probability on the basis of the plaintiff's evidence that the main charge or gist of the statement is false, then you must return a verdict for the defendant.

5. Before proceeding to discuss the additional elements which the plaintiff must prove before you could return a verdict in her favor, I will discuss the issue of truth or falsity as it pertains to some of the claims in this case.

The plaintiff claims that the defendant made statements concerning her performance as a Tax Assessor which appear to fall into two general categories. First, plaintiff claims that the defendant stated that she had lowered assessments on certain properties belonging to family or friends of the plaintiff, and had raised assessments on certain properties belonging to people allegedly in disfavor with the plaintiff. You have heard evidence offered as to these claims. In keeping with the general principle which I outlined above, it is the plaintiff's burden to prove to you, by clear and convincing evidence, that these statements were, in fact, made about her by the defendant, and that they were false. However, if you find from the evidence that the plaintiff was responsible for raising or lowering certain assessments in the manner alleged, you must return a verdict for the defendant even if you believe that the statements made by the defendant carried with them a suggestion of corruption or illegality which you do not believe the evidence has sustained. In other words, a statement which is literally true in its main gist cannot support an action for defamation even if it carries a false and defamatory implication, and even if you believed that it had been made for some improper purpose. *Strada v. Connecticut Newspapers, Inc.*, 193 Conn. 313, 322-325, (1984).

6. The second general category of statements concerning the plaintiff that are involved in this lawsuit concern various actions which the defendant is alleged to have claimed that the plaintiff took in relation to the preparation of the grand list for the Town of Westbrook, and which the defendant is alleged to have stated were in violation of various Connecticut statutes. Once again, on a general level, it is the plaintiff's burden to demonstrate by clear and convincing evidence that any statements shown to have been made by the defendant were false, and if their main gist was, in any particular instance true, then you must return a verdict for the defendant. *Goodrich v. Waterbury Republican-American, supra.* Also again, if you find that the plaintiff has not established the falsity of the statements by clear and convincing evidence, then the fact that any such statement, while literally

true, carries with it a more damaging implication against the plaintiff and which is unsupported by the evidence is irrelevant to your deliberations, and you must return a verdict for the defendant. *Strada v. Connecticut Newspapers, Inc., supra.*

The testimony you have heard concerning allegations that the plaintiff acted in violation of Connecticut law in various respects with regard to the preparation and adoption of the grand list for the Town of Westbrook appears to focus on claimed violations of two types. First, that the plaintiff had improperly made substantive changes to the grand list after it was signed by the Assessors and passed to the Board of Tax Review by submitting revised valuations of certain properties to the Board of Tax Review which did not represent the correction of clerical mistakes and omissions, but rather a reassignment of value to the property by the plaintiff. I instruct you that if you find that the plaintiff did submit substantive changes of the type I just described to the Board of Tax Review after the grand list was signed by the Assessors, or that the plaintiff has not proven to you by clear and convincing evidence that she did not submit any such changes, then the conduct claimed on her part by the defendant was in violation of Connecticut law as alleged by the defendant, and as to any such statements which you find the defendant made concerning the plaintiff, you must return a verdict for the defendant. C.G.S. § 12-60; 18 *Op. Atty. Gen.* 178 (July 19, 1933); *R.F.C. v. Borough of Naugatuck,* 136 Conn. 29 (1949).

The second class of statutory violations which the defendant is claimed to have made against the plaintiff concerns the plaintiff's alleged "unilateral" alterations of the valuations assigned to a number of properties subsequent to the printing of the grand list, but prior to its signing by the Assessors and submission to the Board of Tax Review. There appears to be no dispute that the plaintiff, acting alone, did alter the valuations assigned to a number of properties subsequent to the printing of the grand list, but prior to its signing by the Assessors and submission to the Board of Tax Review. The relevant statute provides, in part, that: "[T]he assessors of

all towns . . . shall . . . view all of the real estate of their . . . municipalit[y], and shall revalue the same for assessment and, in the performance of these duties . . . at least two of the assessors shall act together." C.G.S. § 12-62(a).

If you find on the basis of the evidence that any statements which the defendant made claiming that the plaintiff had acted "unilaterally," improperly, or in violation of law by making such changes in valuation were coupled with statements by the defendant of the factual basis of such an opinion on his part, *and* you find that the plaintiff has not proven by clear and convincing evidence that the main gist of the factual statement was false, then the fact that the the defendant expressed an opinion of impropriety or illegality on the plaintiff's part which you may or may not share would not defeat the fact that a statement of opinion, when made along with disclosure of the factual basis of the opinion is unqualifiedly privileged under our Constitution, may never form the basis of an action for defamation, and you must return a verdict for the defendant. *Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974); *Goodrich v. Waterbury Republican-American, Inc.*, 188 Conn. 107, 117–118 (1982). On the other hand, if you find that the facts stated by the defendant in support of his expression of opinion have been proven by the plaintiff by clear and convincing evidence to be false, and further find the additional elements which I will discuss for you in a moment, then you may return a verdict for the plaintiff.

7. Even if you have found on the basis of the evidence that the plaintiff has proven by clear and convincing evidence, that is, to a high probability, that the statements made about her were false, she is not entitled to prevail in this action unless you also find that the plaintiff has proven to you by clear and convincing evidence that at the time the defendant made any or each such false statement, he either knew that the statement was not true, or made with statement with reckless disregard for whether it was true or not. *New York Times Co. v. Sullivan, supra,* at 379–380; *Dacey v. Connecticut Bar Association, supra,* at 535; *Moriarty v. Lippe,* 162 Conn. 371, 379 (1972).

As was the case in considering the truth or falsity of the statements, the plaintiff must establish by clear and convincing evidence, that is, to a high probability, that the defendant knew the statements were false when he made them, or that he acted with reckless disregard for their truth or falsity. *Gertz v. Robert Welch, Inc., supra,* at 332; *Garrison v. Louisiana, supra,* at 75–76; *St. Amant v. Thompson,* 390 U.S. 727, 731 (1968); *Dacey v. Connecticut Bar Association, supra,* at 539.

8. By reckless disregard for the truth or falsity of a defamatory statement, I mean that in order to find for the plaintiff on this basis, you must be convinced that when the defendant made the statements in question, he possessed a high degree of awareness of their probable falsity. *Garrison v. Louisiana, supra,* at 75–76; *St. Amant v. Thompson, supra,* at 731; *Curtis Publishing Co. v. Butts,* 388 U.S. 130, 153 (1967); *Moriarty v. Lippe, supra,* at 380.

9. To summarize, before you may return a verdict for the plaintiff, the plaintiff must have proven to you with clear and convincing evidence, that is, the plaintiff must have established to a high degree of probability:

a. That any statement allegedly made about her by the defendant was, in fact, made by the defendant.

b. That any such statement was false in the sense that the main gist of the charge contained in any such statement was false as a matter of fact. As I noted above, any statements of opinion on the defendant's part, if coupled with a statement of the underlying factual basis of the opinion, is absolutely privileged under the Constitution, and may not support a verdict for the plaintiff. This is so even if you believe that the opinion was unwarranted or wrong, or was made by the defendant for some wrongful purpose.

c. In the case of any statements you find the defendant to have made about the plaintiff which, on the basis of the evidence you find with convincing clarity to have been false

and defamatory, the plaintiff must also have proven to you by clear and convincing evidence that at the time the defendant made any such statement, he either knew it was false, or knew to a high probability that it was false.

d. The plaintiff's burden of proof on these issues is cumulative. If you find that she has failed at any step to prove the matters which she is obliged to prove, or has failed in any respect to meet the standard of clear and convincing evidence as to those issues governed by that standard of evidence, then you must return a verdict in favor of the defendant.

THE DEFENDANT

BY: /s/ Steven J. Errante

STEVEN J. ERRANTE, ESQ. FOR
LYNCH, TRAUB, KEEFE AND
SNOW, P.C.
#34876

CERTIFICATION

This is to certify that a copy of the foregoing was hand delivered on this 11th day of June, 1985, to:

Roger Sullivan, Esq.
7 South Main Street
P.O. Box 811
Branford, CT. 06405

/s/ Steven J. Errante

STEVEN J. ERRANTE, ESQ.

PRELIMINARY STATEMENT OF ISSUES

The defendant-appellant in the above-entitled matter, pursuant to Section 3012 of the Practice Book, hereby makes a preliminary statement of the issues intended for presentation on appeal:

In a defamation action alleging that a member of the Board of Assessors of the Town of Westbrook libeled and slandered the plaintiff, the Chairman of said Board, by statements that the plaintiff made unilateral changes on the revaluation of the Westbrook Grand List benefiting the plaintiff's family and friends, where the jury returned a verdict for the plaintiff, did the court err:

1. In refusing to direct a verdict for the defendant, in submitting the case to the jury and in refusing to set aside the verdict and direct judgment for the defendant, where the evidence as a matter of law was insufficient on a clear and convincing evidentiary standard as to falsity of the utterances and malice?

2. In submitting the case to the jury, in refusing to set aside the verdict, and in refusing to direct judgment for the defendant, where the evidence was clear and unequivocal that the statements made by the defendant about the plaintiff's conduct as the Chairman of the Board of Assessors were true?

3. In its charge and supplemental charge with respect to the standard of proof on falsity and malice?

4. In refusing to declare a mistrial where the plaintiff's counsel's questions suggested that the Town of Westbrook agreed to pay the defendant's attorney's fees and expenses, and by inference, any judgment entered?

5. In excluding evidence concerning the later sale price of marinas alleged to have been undervalued by the plaintiff, showing that certain marinas sold for three or four times their assessed value shortly after the effective date of the revaluation?

6. In refusing to charge as requested, and in refusing to submit interrogatories proposed by the defendant to the jury?

COMPLAINT

FIRST COUNT

1. The plaintiff, Joan O. Holbrook, is a resident of the Town of Westbrook, Connecticut.

2. The defendant, Titus J. Casazza, is a resident of the Town of Westbrook, Connecticut.

3. The plaintiff for many years has been an Assessor and Chairman of the Board of Assessors in the Town of Westbrook, Connecticut. For many years past the plaintiff has resided in and conducted her business in Westbrook and adjacent communities, has served said community as a public official and a business person, has enjoyed a good opinion and esteem of the residents and businesses of said community, and has established among the people of said community, an excellent reputation as an Assessor, and for business skill and ability, for honesty, integrity, and good character. Plaintiff, through her business activity and her public service to the people of her community, and as an Assessor and as Chairman of the Board of Assessors of the Town of Westbrook, has extended her aforesaid reputation generally as a business woman and as an Assessor among the public officials, bankers, businessmen, and the public generally in the Town of Westbrook, Middlesex County and throughout other counties within the State of Connecticut.

4. At various times since January of 1982, the defendant, Titus J. Casazza, uttered and published false statements concerning the plaintiff, to wit:

(a) That the plaintiff had violated Section 12-62 of the Connecticut General Statutes in that the plaintiff made changes in the October 1, 1981 Westbrook Grand List unilaterally;

(b) That the plaintiff violated Section 12-60 of the Connecticut General Statutes in that substantive and unauthorized changes were made to the 1981 Grand List, subsequent to the official signing of the List;

(c) That the plaintiff changed and/or erased the assessed value of four hundred and forty-five (445) properties in the Town of Westbrook, subsequent to the printing of the 1981 Grand List, but prior to the signing of the Grand List by the plaintiff; and

(d) That the plaintiff reduced the assessments by making changes on the data processing change slips submitted to the Board of Tax Review of the Town of Westbrook by the plaintiff; and

(e) That the plaintiff had reduced the assessments on properties owned by members of her family;

(f) That the plaintiff had reduced assessments on properties owned by her friends;

(g) That the plaintiff had increased the assessments on properties owned by those persons who were in her disfavor.

5. At various times and particularly by letter dated April 29, 1982, defendant, Titus J. Casazza, through false accusation, innuendo and inference, created an adverse reflection on plaintiff's reputation and character by publishing a request for an investigation alleging that the plaintiff violated the provisions of Section 12-62 of the Connecticut General Statutes and Section 12-60 of the Connecticut General Statutes.

6. The publication described and referred to in paragraphs 4 and 5 were false, malicious and/or done with reckless disregard of the truth.

7. On September 22, 1982, the plaintiff, acting through her attorney, pursuant to Connecticut General Statutes

52-237, requested the defendant retract said libelous charges in as public a manner as that in which they were made, but said defendant failed to do so within a reasonable time.

8. Said libelous charges were read by friends and relatives residing in the Town of Westbrook and in the surrounding communities, by other persons who are assessors in the neighboring communities, and within the State of Connecticut, and by all persons generally within Middlesex County and those counties bordering the Connecticut shore line, and have resulted in injury to the profession of the plaintiff and her means of livelihood, and injury to her character and reputation; has caused her to be held up to public ridicule and humiliation; has caused her to be held up to scandal and reproach; has interfered with her in the performance of her profession; and has caused her great annoyance and embarrassment; has prejudiced plaintiff and injured her reputation for honesty, integrity, and ability in the performance of her duties as an assessor, and in the conduct of her profession, whereby she has suffered heavy pecuniary loss and her good name and character has been greatly injured.

9. Said libelous charges containing the false, libelous, and defamatory matter herein complained of has caused plaintiff to suffer great mental anguish, pain, suffering and humiliation.

SECOND COUNT

1.-9. Paragraphs 1 through 9 inclusive of the First Count are made paragraphs 1 through 9 of the Second Count.

10. At various times since January of 1982, and particularly at hearings of various boards and commissions of the Town of Westbrook and of the State of Connecticut, and at other various times to reporters of various newspapers circulated within the County of Middlesex and the Connecticut shore line area, the defendant, in the hearing of others, uttered the false statements and created the false innuendo,

accusations and inferences described in Paragraphs 4 and 5 of the First Count.

11. The utterances referred to in the preceding paragraph were false, malicious, and/or done with reckless disregard of the truth.

12. Said libelous charges were heard and read by friends and relatives residing in the Town of Westbrook, and in the surrounding communities, by other persons who are assessors in the neighboring communities, and within the State of Connecticut, and by all persons generally within Middlesex County and those counties bordering the Connecticut shore line, and have resulted in injury to the profession of the plaintiff and her means of livelihood, and injury to her character and reputation; has caused her to be held up to public ridicule and humiliation; has caused her to be held up to scandal and reproach; has interfered with her in the performance of her profession; and has caused her great annoyance and embarrassment; has prejudiced plaintiff and injured her reputation for honesty, integrity, and ability in the performance of her duties as an assessor, and in the conduct of her profession, whereby she has suffered heavy pecuniary loss and her good name and character has been greatly injured.

13. Said libelous charges containing the false, libelous, and defamatory matter here complained of has caused plaintiff to suffer great mental anguish, pain, suffering and humiliation.

WHEREFORE, the plaintiff claims:

1. Money damages;

2. An order requiring the defendant to publish a retraction of his libelous and slanderous statements in as public a manner as that in which they were made.

3. Exemplary damages in an amount equal reasonable attorneys' fees plus costs and other allowable costs.

4. Such other and further relief as this court may appear just and reasonable.

Dated at Madison, Connecticut, this 19th day of November, 1982.

PLAINTIFF,
BY /s/ George J. Kinsley,
Her Attorney

Filed November 26, 1982

AMENDED ANSWER

ANSWER

FIRST COUNT

1. As to paragraphs 1 and 3, the defendant has insufficient knowledge with which to form a belief, and therefore, leaves the plaintiff to her proof.

2. Paragraph 2 is admitted.

3. Paragraphs 4a, 4b, 4d, 4e, and 4f are admitted in that they were uttered. It is denied that they are false statements.

4. Paragraphs 4c and 4g are denied.

5. Paragraphs 5 and 6 are denied.

6. As to paragraphs 7, 8 and 9, the defendant has insufficient knowledge with which to form a belief, and therefore, leaves the plaintiff to her proof.

SECOND COUNT

1-9 Answer to Paragraphs 1 through 9 of the First Count are hereby made answers to paragraphs 1 through 9 of the Second Count.

10. Paragraphs 10 and 11 are denied.

11. As to Paragraphs 12 and 13, the defendant has insufficient knowledge with which to form a belief, and therefore, leaves the plaintiff to her proof.

BY WAY OF FIRST SPECIAL DEFENSE

If the defendant printed and published any or all of the statements and words alleged in the plaintiff's declaration,

which the defendant denies, such statements and words were true in substance and fact.

BY WAY OF SECOND SPECIAL DEFENSE

If it shall appear that he ever printed and published the words as alleged by the plaintiff that the same were stated to a public officer in the course of his duty as such officer and as such were privileged communications.

THE DEFENDANT
BY: /s/ STEVEN J. ERRANTE, ESQ., FOR
LYNCH, TRAUB, KEEFE AND
SNOW, P.C.

Filed June 12, 1985

REPLY

The plaintiff denies the allegations of the defendant's special defenses.

THE PLAINTIFF
BY /s/ Roger Sullivan,
Attorney for the Plaintiff

Filed June 13, 1985

COMPLAINT

FIRST COUNT

1. The plaintiff, Joan O. Holbrook, is a resident of the Town of Westbrook, Connecticut.

2. The defendant, Gala H. Nordquist, is a resident of the Town of Westbrook, Connecticut.

3. The plaintiff for many years has been an Assessor and Chairman of the Board of Assessors in the Town of Westbrook, Connecticut. For many years past the plaintiff has resided in and conducted her business in Westbrook and adjacent communities, has served said community as a public official and a business person, has enjoyed a good opinion and esteem of the residence and businesses of said community, and has established among the people of said community, an excellent reputation as an Assessor, and for business skill and ability, for honesty, integrity, and good character. Plaintiff, through her business activity and her public service to the people of her community, and as an Assessor and as Chairman of the Board of Assessors of the Town of Westbrook, has extended her aforesaid reputation generally as a business woman and as an Assessor among the public officials, bankers, businessmen, and the public generally in the Town of Westbrook, Middlesex County and throughout other counties within the State of Connecticut.

4. At various times since January of 1982, the defendant, Gala H. Nordquist, uttered and published false statements concerning the plaintiff, to wit:

(a) That the plaintiff had violated Section 12-62 of the Connecticut General Statutes in that the plaintiff made changes in the October 1, 1981 Westbrook Grand List unilaterally;

(b) That the plaintiff violated Section 12-60 of the Connecticut General Statutes in that substantive and unauthorized changes were made to the 1981 Grand List, subsequent to the official signing of the List;

(c) That the plaintiff changed and/or erased the assessed value of four hundred and forty-five (445) properties in the Town of Westbrook, subsequent to the printing of the 1981 Grand List, but prior to the signing of the Grand List by the plaintiff; and

(d) That the plaintiff reduced the assessments by making changes on the data processing change slips submitted to the Board of Tax Review of the Town of Westbrook by the plaintiff; and (e) That the plaintiff had reduced the assessments on properties owned by members of her family;

(f) That the plaintiff had reduced assessments on properties owned by her friends;

(g) That the plaintiff had increased the assessments on properties owned by those persons who were in her disfavor.

5. At various times and particularly by letter dated April 29, 1982, defendant, Gala H. Nordquist, through false accusation, innuendo and inference, created an adverse reflection on plaintiff's reputation and character by publishing a request for an investigation alleging that the plaintiff violated the provisions of Section 12-62 of the Connecticut General Statutes and Section 12-60 of the Connecticut General Statutes.

6. The publications described and referred to in paragraphs 4 and 5 were false, malicious and/or done with reckless disregard of the truth.

7. On September 22, 1982, the plaintiff, acting through her attorney, pursuant to Connecticut General Statutes 52-237, requested the defendant retract said libelous charges in as public a manner as that in which they were made, but said defendant failed to do so within a reasonable time.

8. Said libelous charges were read by friends and relatives residing in the Town of Westbrook, and in the surrounding communities, by other persons who are assessors in the neighboring communities, and within the State of Connecticut, and by all persons generally within Middlesex County and those counties bordering the Connecticut shore line, and have resulted in injury to the profession of the plaintiff and her means of livelihood, and injury to her character and reputation; has caused her to be held up to public ridicule and humiliation; has caused her to be held up to scandal and reproach; has interfered with her in the performance of her profession; and has caused her great annoyance and embarrassment; has prejudiced plaintiff and injured her reputation for honesty, integrity, and ability in the performance of her duties as an assessor, and in the conduct of her profession, whereby she has suffered heavy pecuniary loss and her good name and character has been greatly injured.

9. Said libelous charges containing the false, libelous, and defamatory matter herein complained of has caused plaintiff to suffer great mental anguish, pain, suffering and humiliation.

SECOND COUNT

1.-9. Paragraphs 1 through 9 inclusive of the First Count are made paragraphs 1 through 9 of the Second Count.

10. At various times since January of 1982, and particularly at hearings of various boards and commissions of the Town of Westbrook and of the State of Connecticut, and at other various times to reporters of various newspapers circulated within the County of Middlesex and the Connecticut shore line area, the defendant, in the hearing of others, uttered the false statements and created the false innuendo, accusations and inferences described in Paragraphs 4 and 5 of the First Count.

11. The utterances referred to in the preceding paragraph were false, malicious, and/or done with reckless disregard of the truth.

12. Said libelous charges were heard and read by friends and relatives residing in the Town of Westbrook, and in the surrounding communities, by other persons who are assessors in the neighboring communities, and within the State of Connecticut, and by all persons generally within Middlesex County and those counties bordering the Connecticut shore line, and have resulted in injury to the profession of the plaintiff and her means of livelihood, and injury to her character and reputation; has caused her to be held up to public ridicule and humiliation; has caused her to be held up to scandal and reproach; has interfered with her in the performance of her profession; and has caused her great annoyance and embarrassment; has prejudiced plaintiff and injured her reputation for honesty, integrity, and ability in the performance of her duties as an assessor, and in the conduct of her profession, whereby she has suffered heavy pecuniary loss and her good name and character has been greatly injured.

13. Said libelous charges containing the false, libelous, and defamatory matter herein complained of has caused plaintiff to suffer great mental anguish, pain, suffering and humiliation.

WHEREFORE, the plaintiff claims:

1. Money damages;

2. An order requiring the defendant to publish a retraction of her libelous and slanderous statements in as public a manner as that in which they were made.

3. Exemplary damages in an amount equal to reasonable attorneys' fees plus costs and other allowable costs.

4. Such other and further relief as this court may appear just and reasonable.

Dated at Madison, Connecticut, this 19th day of November, 1982.

PLAINTIFF
By /s/ George J. Kinsley,
Her Attorney

Filed November 26, 1982

ANSWER

The defendant in the above entitled action, GALA H. NORDQUIST, answers the plaintiff's complaint dated November 19, 1982, as follows:

FIRST COUNT:

1. As to Paragraphs 1, 3, 7, 8 and 9, the defendant has insufficient knowledge of the facts alleged therein and therefore leaves the plaintiff to her proof.

2. The defendant admits Paragraph 2.

3. As to Paragraphs 4 (a), (b), (c), (d), (e), (f), (g), 5, and 6, the defendant denies the allegations contained therein.

SECOND COUNT:

As to Paragraphs 1, 3, 7, 8, 9, 11, 12 and 13, the defendant has insufficient knowledge of the facts alleged therein and therefore leaves the plaintiff to her proof.

2. The defendant admits Paragraph 2.

3. As to Paragraphs 4 (a), (b), (c), (d), (e), (f), (g), 5, 6 and 10, the defendant denies the allegations contained therein.

THE DEFENDANT
By /s/ David J. Peska
For Peska, Sipples & Munro
Her Attorneys

Filed November 1, 1984

SPECIAL DEFENSE

If it shall appear that she ever printed and published the words as alleged by the plaintiff, that the same were stated to a public officer in the course of his duty as such officer and as such were privileged communications.

THE DEFENDANT
By /s/ David J. Peska
For Peska, Sipples & Munro
Her Attorneys

Filed May 10, 1985

REPLY

The plaintiff denies the allegations of the defendant's special defense.

THE PLAINTIFF
BY /s/ Roger Sullivan
Attorney for Plaintiff

Filed June 13, 1985

INTERROGATORIES

1. Has the plaintiff proved by a preponderance of the evidence that the defendant uttered and published any defamatory statements about her?

Yes X No _____

2. Has the plaintiff proved by clear and convincing evidence the falsity of any of the defamatory statements you may have found?

Yes X No _____

3. Has the plaintiff proved by clear and convincing evidence that the defendant acted with actual malice in uttering and publishing any defamatory statement you have so found to have been uttered and published?

Yes X No _____

[signature illegible]
Foreperson

June 14, 1985

PLAINTIFF'S VERDICT

In this case the Jury further finds the issues for the Plaintiff Joan O. Holbrook, as against the Defendant Titus J. Casazza and therefore finds for said Plaintiff to recover of the Defendant Titus J. Casazza

General damages $21,000
Special damages $135,750
Exemplary damages $52,251 plus 5,860

[signature illegible]
Foreperson

June 14, 1985

PLAINTIFF'S VERDICT

In this case the Jury further finds the issues for the Plaintiff Joan O. Holbrook as against the Defendant Gala H. Nordquist and therefore finds for said Plaintiff to recover of the Defendant Gala H. Nordquist

General damages $7,000
Special damages $45,250
Exemplary damages $17,416 plus 1,950

[signature illegible]
Foreperson

RESULTS OF CASAZZA'S INVESTIGATION

1. The evidence produced during the examination of the defendant Casazza at trial demonstrated that he conducted an independent investigation of reductions in assessments on property owned by individuals related to the plaintiff (T.pp. 147a-155a). At the March 10th meeting, Casazza inquired of Mr. Viogrande whether he had made changes to the junkyard, farmlands, marina or Porton valuations and Mr. Viogrande stated that he had not (T.pp. 830-833).

2. Exhibits K through S (T.pp. 922-924) were field cards pertaining to properties on Essex Road and were discussed individually by Casazza who demonstrated that each of the properties referred to in these exhibits were owned by relatives of the plaintiff.

Exhibit K was a property owned by an individual married to Sanford Holbrook's daughter who is related to Alan Holbrook, the plaintiff's husband (T.p. 924). The field card for this property showed a twenty percent reduction in fair market value for unfinished construction (T.p. 927). The revaluation company had noted on this card that seven attempts were made to gain access to the premises which were unsuccessful and that the property was assessed as being finished. Although the certificate of occupancy for this property was not issued until 1984 (T.p. 1084) Casazza verified that it was occupied in 1981 (T.p. 1158).

As to the Wennerberg property (Exhibit L), Casazza determined that the plaintiff's husband and his brother had taken back a purchase money mortgage on said property in January of 1980 and had a financial interest in it (T.p. 928). The plaintiff determined this by researching the land records and reading the mortgage deed for this property (T.pp. 928-929; Defendant's exhibits S & T; T.pp. 930, 954, 955). The plaintiff's handwriting on the field card for this property indicated that a ten percent deduction and an additional forty percent deduction was made in the valuation of such property (T.p. 932).

Defendant's Exhibit M. Demonstrated that the plaintiff's husband was a part owner of the property in 1981 (T.p. 934) in a turnpike interchange or industrial zone and that a Holbrook relative was involved in ownership of the property consistently from 1979 through 1982. On this exhibit the original figures were erased and new figures were inserted which reduced the per acre value from $75,000.00 per acre to $4,500.00 per acre (T.p. 938).

Exhibit N pertained to property owned by Pauline Redway who as far as the defendant knew was connected to the Holbrook family in 1981 (T.p. 942).

Defendant's Exhibit O showed an ownership interest held by the plaintiff's husband, her husband's aunt, her brother-in-law's daughter and a brother-in-law (T.p. 943). The revaluation company's assessment was $55,000.00 per acre on the field card for this property which was reduced in the plaintiff's handwriting to $4,500.00 per acre (T.p. 944).

Exhibit P was a field card for industrial-zoned property showing ownership by members of the Holbrook family where a 5-digit valuation was reduced to a 4-digit valuation, but the figures were unintelligible (T.p. 949).

Exhibit Q demonstrates that property owned by members of the Holbrook family was classified as landlocked and that the plaintiff erased the original values and adjusted the total value (T.p. 953).

Exhibit R indicates ownership by Sanford C. and Joyce G. Holbrook of property on which the revaluation company had established a value of $26,000.00 per acre and the plaintiff had inserted a ten percent deduction showing the value to be $23,400.00 per acre (T.p. 954). Casazza contended that the property was used commercially despite its limited utilization classification and for that reason there should be no ten percent deduction for limited utility. Id.

Defendant Casazza testified that other properties similarly situated to the Holbrook properties were not treated in the same manner by the plaintiff as those discussed above (T.p. 956).

3. The defendant Casazza testified extensively (T.pp. 981-1028) regarding the basis for his belief that the $100,000.00 per acre valuation put on the Holbrook marina was inadequate (T.p. 105b).[1]

Defendant Casazza inquired of Mr. Viogrande as to how the $100,000.00 per acre valuation was determined for the Holbrook marina (T.pp. 145a, 148a). Mr. Viogrande initially suggested a value of $200,000.00 per acre (T.p. 1396) but conceded to plaintiff's suggestion of $100,000.00 per acre value prior to discovering that the sale of the Holbrook marina was effected for $1,200,000.00 (T.p. 1398). Mr. Viogrande testified that had he known of the impending sale of the Holbrook marina before submitting the revaluation company's assessment of it, his valuation of marina property would have been higher (T.p. 1416).

Nordquist's testimony as confirmed by Mr. Viogrande, clarified that she was present in the assessor's office when the marina valuations were discussed in December 1981 but did not participate or concur in the values decided upon (T.pp. 1067-1070, 1407, 1442-1443, 1459). Mr. Viogrande testified that the per acre value placed on the marinas in 1981 was "not fairly within the range of choice for an assessor to make" and that use of that figure violated his principles as an appraiser (T.p. 1445).

The court determined that the subsequent sale price of the marina was not admissible in evidence (T.p. 1001).

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[1] The two marina properties owned by plaintiff's husband at 633 Boston Post Road and 34 Hammock Road South are referred to as the "Holbrook (or Patchoug) Marina" for purpose of this brief.

4. An additional reduction of ten percent was made in the valuation of the Porton property on the basis that it was a rear lot (Defendant's exhibit H; T.pp. 869-870, 1157). Mr. and Mrs. Porton were individuals whom Casazza knew to be friends of the plaintiff whom he had seen visiting the plaintiff and discussing social plans in the assessor's office (T.p. 875). Casazza's testimony regarding the Porton property (T.pp. 870-876) evidences his concern that the property was purchased in 1979 for $135,000.00 according to the tax stamps on the field card and that the revaluation company's estimate of fair market value was $94,740.00 but that plaintiff had given an additional ten percent deduction for a supposed rear lot which was in fact, according to defendant, an easement to get to the Porton property (T.pp. 1076-1080, 1167).

5. The field card for the Woodstock junkyard property showed erasures (T.p. 914) and in addition its value had been changed in the abstract after printing (T.p. 876). The field card for the Woodstock property was presented as Defendant's exhibit J (T.p. 913). When defendant Casazza detected the erasure on the Woodstock junkyard card, he referred to the original figures on the abstract and found that the original assessment on the abstract "in round numbers" was approximately $30,750.00 higher than that entered by the plaintiff (T.p. 915). The original assessed value of the junkyard was $112,270.00 (T.p. 916). Subsequent to the 1981 revaluation, the assessed value of the Woodstock property, was increased from $81,520.00 to $150,320.00 but later reduced to $114,330.00 (T.p. 917). Casazza testified that the only relationship between the plaintiff and Mr. Woodstock of which he knew was that they had served together on the Board of Finance and that Mr. Woodstock visited the assessor's office on one occasion when the plaintiff left the office with him (T.pp. 917-918). Casazza also testified that he relied upon a letter which he found in the Town's files dated February 5, 1982 in which the plaintiff requested that Mr. Viogrande reduce the assessment on the Woodstock junkyard to $50,000.00 per acre (Defendant's exhibit I, T.p. 878).

Mr. Viogrande testified that he disputed the value placed on the Woodstock junkyard and refused to make the reduction which the plaintiff insisted on making (T.p. 1384). Casazza inquired of Mr. Viogrande as to whether or not he reduced the value of the Woodstock junkyard and learned that he had not (T.p. 146a). Casazza also verified with Mrs. Bushnell, Chairman of the Board of Tax Review, that Mr. Woodstock had not appeared before the Board to seek a reduction in valuation (T.pp. 863, 1028).

6. Defendant Casazza determined that there were two clearly identifiable lots on the town assessor's map and deed for the Casey property which had been assessed by the plaintiff as one lot by reducing the value (T.p. 958; Plaintiff's Exhibits U & V; T.p. 964). By so doing, the plaintiff reduced the value by $30,710.00 (T.p. 967; exhibit W; T.p. 970).

7. Defendant's Exhibits X and Y pertain to the Daley and Dunn properties for which the plaintiff had changed the values from $75,000.00 per acre to $4,500.00 per acre and classified the properties as having landlocked rear acres (T.pp. 972, 1142). These were turnpike interchange properties for which the revaluation company had established the base price of $75,000.00 per acre. Defendant Casazza was of the opinion that these properties were not landlocked by virtue of having checked the assessor's maps and subdivision plans which showed a town road accessing the property even though construction of that road had not been completed (T.pp. 973, 974, 1143, 1161). Casazza reiterated that he checked these maps before making his accusations of the plaintiff (T.p. 976; Defendant's Exhibit Z; T.p. 977). In addition, the defendant checked the record of town meetings to determine if the Town had accepted the road leading up to these properties as a town road (T.p. 978). To the best of the defendant's recollections he consulted these documents before making his accusations against the plaintiff (T.p. 979).

EVIDENCE CONCERNING ERASING

Mr. Walter Birck, assessor from a neighboring town and a former President of the Connecticut Assessor's Association, testified that he had never approved of changing field sheet valuations by erasure as a practice. He could not name one assessor or one town who did consider it acceptable (T.p. 478).

Mr. Mauro Bisaccia, member of the Westbrook Board of Assessors from 1960 to 1980, testified that it was not "an acceptable procedure in a revaluation year" to make erasures on the field cards prior to the signing of the grand list (T.p. 1280). Mr. Bisaccia also testified that in his twenty years as a Westbrook assessor he never adjusted an assessment without "turning it over" to another member of the Board of Assessors (T.p. 1277).

A. OK.

Q. All right.

MR. ERRANTE: With the court's permission, I'd like to read these two exhibits to the jury, Your Honor.

THE COURT: You may.

MR. ERRANTE: Thank you. First let me read to you defendant's exhibit B, which is a letter to Donald Zimbouski by the plaintiff, Joan Holbrook, dated March 26th, 1982. Dear Mr. Zimbouski, today I spoke with Rick Wall regarding a serious problem which has arisen on our Board of Assessors in Westbrook, and he asked me to write to you requesting in writing your opinion as what was the law. We have just completed a revaluation in Westbrook and the Board of Tax Review have completed their hearings and duties. After our abstract was signed by two members of the Board of Assessors and after the B.T.R. hearings, B.T.R. being Board of Tax Review, one assessor now says that because I, a chairperson made changes without the approval of the Board as a whole, the Board of Assessors is at this point going to raise all these assessments back up again. According to Rick and Fred Schumora (phonetic), the Board of Assessors has absolutely no authority to do anything to the 10-1-81 list, and of course, they will have no authority whatsoever after July 1st, 1982, as the Town voted to disband the Board and hire a professional assessor then. Our Board works part-time and the revaluation team was very late and lagging behind throughout the last few months, thus necessitating my reviewing values with them, changing them when necessary with no time to call Board meetings to discuss same with the Board. I also did not feel it was my responsibility to call the other assessors to check on

the revaluation, as this was their responsibility as assessors, too. Our first selectman as well as myself are very concerned with the repercussions if this were to occur. Would you be so kind as to send me something in writing along with the pertaining Statutes. We would appreciate an early reply if it is convenient as the two remaining members of the Board of Assessors have indicated they are immediately going to enforce this action. Many thanks. Regards, Joan O. Holbrook. The response by Mr. Zimbouski dated April 8th, 1982. This is to acknowledge receipt of your letter of March 26th, 1982, concerning the recent revaluation conducted in the Town of Westbrook for its October 1st, 1981, grand list. It is my understanding that the changes were made in the recommended values submitted by the revaluation firm retained by the Town of Westbrook to assist the assessors in the revaluation and that such changes were made prior to the filing of the abstract with the Town clerk within the prescribed time limit in accordance with Section 12-55 of the Connecticut General ***

PORTION OF RESPONDENT'S APPELLATE BRIEF

In January of 1982, prior to any controversy, Casazza sought and obtained a wetland reduction in the value of his own property (T.pp. 818, 819: App. 40A). Upon learning of this, Holbrook questioned him on the use of his position as an assessor to obtain the reduction (App. 41A, 42A). Casazza angrily denied any wrongdoing (T.p. 63) but did not return to the assessor's office until February 23, 1982 (T.pp. 562, 569; App. 44A, 66A); when he embarked on a private investigation of the assessors' records with a view to determining any misconduct on the part of Holbrook in her work as an assessor (T.pp. 64, 819; App. 21A, 67A). Until then, he had no criticism of the plaintiff's work as an assessor (App. 18A, 43A).

Supreme Court, U.S.
FILED
NOV 25 1987
JOSEPH F. SPANIOL, JR.
CLERK

No. 87-677

In The

Supreme Court Of The United States

OCTOBER TERM, 1987

TITUS J. CASAZZA,
Petitioner,

v.

JOAN O. HOLBROOK,
Respondent.

GALA H. NORDQUIST,
Petitioner,

v.

JOAN O. HOLBROOK,
Respondent.

PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF CONNECTICUT

RESPONDENT'S BRIEF IN OPPOSITION (WITH SEPARATE APPENDIX)

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1987

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QUESTIONS PRESENTED

Whether the scope of independent review under *Bose* is unsettled;

If so, whether the *Bose* standard of independent review should be extended to issues of falsity as well as malice.

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TABLE OF AUTHORITIES

No. 87-677

In The

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OCTOBER TERM, 1987

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v.

JOAN O. HOLBROOK,
Respondent.

RESPONDENT'S BRIEF IN OPPOSITION

OPINIONS BELOW

The opinions of the trial court in refusing to set aside the judgment *non obstante verdicto* or to set aside the verdicts are reprinted in the appendix separately bound at (A. pp. 104-117A).

The opinion of the Supreme Court of the State of Connecticut, reported at 204 Conn. 336 (1987) (no Atlantic Reporter citation yet furnished), is reprinted in the appendix to the petitioners' brief at (A. p. 27a).

REQUEST FOR DENIAL OF PETITION

The respondent, Joan O. Holbrook, respectfully requests that this Court deny the petition for writ of certiorari, seeking review of the opinion by the Supreme Court of the State of Connecticut in this case. That opinion is reported at 204 Conn. 336 (1987) and is incorporated in the appendix to the petitioner's brief at (A. p. 27a).

COUNTERSTATEMENT OF FACTS

The respondent, Joan Holbrook (HOLBROOK), was a certified municipal assessor and the chairman of the Board of Assessors for the Town of Westbrook when the town began its decennial revaluation in 1981 (T.p. 38). Holbrook, as the most experienced member of the Board, performed the bulk of the revaluation work (T.pp. 49-51; A. 18A, 47-50A)* assisted by a real estate appraisal firm and to coassessors who are the petitioners in this action: Gala Nordquist (NORDQUIST) and Titus Casazza (CASAZZA). Nordquist had little assessing experience and confined herself to clerical work in the assessor's office (A. 18A; T.p. 1434). Casazza was a newly appointed and untrained assessor (T.p. 1070; A. 41-45A) whose part-time role (A. 52-53A) was limited to transposing information for the assessor's records to field cards used by the appraisal firm (T.pp. 370, 1434; A. 46-49A).

In January of 1982, prior to any controversy, Casazza sought and obtained a wetland reduction of the value of his own property (T.pp. 818, 819; A. 57A). Upon learning of this, Holbrook questioned him on the use of his position as an assessor to obtain the reduction (A. 59-60A). Casazza angrily denied any wrongdoing (T.p. 63) but did not return to the assessor's office until February 23, 1982 (T.pp. 562, 569; A. 62A, 66a), when he embarked on a private investigation of the assessors' records with a view to determining any misconduct on the part of Holbrook in her work as an assessor (T.pp. 64, 819;

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* Note: There are three transcripts containing evidence taken at trial. "T" denotes the principal transcript containing 1,639 pages covering May 10, 1985, May 14, 1985, May 15, 1985, May 22, 1985, May 23, 1985, June 4, 1985, June 6, 1985, June 12, 1985, June 13, 1985 and June 14, 1985 prepared by Doris Whitmore, court monitor; "T(2)" denotes the transcript containing 156 pages for May 29, 1985 by Cheryl A. Dickson, court reporter; "T(3)" denotes the transcript containing 114 pages for May 30, 1985 by Cheryl A. Dickson, court reporter. Separate designation is necessary because of the lack of chronological pagination among the three transcripts. Transcript references in this brief are furnished merely to document the factual issues called into question by the petitioners.

A. 29-31A, 96A). Until then, he had no criticism of the plaintiff's work as an assessor (A. 26A, 60-61A).

On February 23, 1982 the results of the revaluation work culminated in an abstract which contained the October 1, 1981 values for the slightly more than 5,000 parcels of real estate located within the town. It was signed by Holbrook and Nordquist, a majority of the Board of Assessors, whose signatures validated it as the grand list for the town as of October 1, 1981 (T.p. 58; A. 26A, 53-54A). Nordquist was satisfied at the time that all of the entries were proper (A. 25A). Casazza was available at the time of signing but refused to participate (T.pp. 58, 189; A. 26A, 61A). The abstract was then delivered to the Board of Tax Review, a separate municipal tax agency, which subsequently made corrections in value for 27 of the properties on the list (T.pp. 512-513; A. 1-6A). Shortly after the signing of the grand list, Casazza privately persuaded Nordquist that she had endorsed a list which contained numerous irregularities attributable to the work of Holbrook (T.pp. 71; A. 31-33A, 71-73A). The immediate result was a confrontation and enmity between Holbrook and Nordquist (T.pp. 572, 581, 604). Thereafter, Nordquist acted in concert with Casazza in accusing Holbrook of a number and variety of wrongful acts.

On March 4, 1982 Casazza and Nordquist brought the first of their complaints to Donald Morrison, First Selectman for the Town of Westbrook (T.(2)p. 143). They alleged that Holbrook was involved in a large number of improprieties evidenced by field card erasures (although they omitted the field card for Casazza's own property on which he had obtained a reduction and an amendment that was reflected by erasure (T.p. 1072; T.(2)p. 123) and by unauthorized reductions in property values for relatives and friends (T.pp. 596, 647). The First Selectman arranged a meeting of the principals and with the appraisal firm (which had assisted in the revaluation) on March 10, 1982 (T.p. 648). At that meeting, Casazza charged Holbrook with the following specific improprieties in her duties as an assessor: (1) creating improper reductions for

wetlands in violation of *Conn. Gen. Stat.* § 22a-45; (2) 445 illegal erasures on field cards used to establish property values during the 1981 revaluation; (3) undervaluing farmland; (4) undervaluing marinas; (5) undervaluing a junkyard; (6) improperly classifying properties as landlocked; (7) 27 illegal changes in the grand list which they attributed to Holbrook after its execution; (8) improperly reducing the value of commercial property; and (9) the favoring of family and friends (T.pp. 647-654, 830-833; T.(2)pp. 143-148). Nordquist joined Casazza in these accusations (T.pp. 584, 596-597, 648-652, 1151-1155).

These accusations of misconduct were repeated by Casazza in further meetings with the First Selectman on March 16, 1982 and March 22, 1982 (T.(3)pp. 3-7). Holbrook was quick to admit responsibility as an assessor for the correction of values prior to signing of the list, but denied any impropriety in doing so and labeled the charges false (Ex. 3d; T.p. 81). The First Selectman, with the concurrence of the parties, requested an investigation of the complaint by the Connecticut Association of Assessing Officers. The story appeared in the newspapers on April 5, 1982 and thereafter became the subject of intense publicity in the months and years which followed (Ex. 3, 11, 18; T.pp. 386, 395). During the ensuing period, Casazza and Nordquist acted as regular sources of information to the press in its reportage of these events which reached the proportions of a major scandal in the small shoreline town of Westbrook (T.pp. 381, 385, 386, 399, 421-423, 591, 592, 1150, 1152; T.(3)pp. 56-63, 94). The information which the petitioners supplied and the frequent republication and repetition of their several charges provided continuing fuel for a controversy which not only had aspects of sensationalism but involved a matter of interest to many of the town's residents — the validity of the tax assessment on one's own property. Casazza's use of the press as a forum for his charges is seen on April 8, 1982, when the Middletown Press quoted the opinion of the Connecticut Association of Assessing Officers president, William J. Coughlin, Jr., that the charges reported did not appear to involve illegal conduct. Casazza

immediately responded by calling the newspaper to dispute Coughlin's opinion and to assert that Holbrook's conduct clearly violated the provisions of *Conn. Gen. Stat.* § 12-62 (Ex. 3F; T.pp. 447, 448; T.(3)p. 97) and in his frequent contact with news reporters (T.(3)pp. 97-99). Casazza called a special meeting of the Board of Assessors on March 25, 1982 at which he and Nordquist voted to remove Holbrook as chairman and to replace her in office with Nordquist (Ex. 21; T.p. 586; T.(3)pp. 7-8). On April 27, 1982, the committee of the Connecticut Association of Assessing Officers which had been appointed to investigate the charges, issued its findings and a report in which it found that acceptable assessing procedures had been followed by Holbrook and that no wrongdoing existed on her part (Ex. 7; T.p. 585). Casazza and Nordquist received a copy of the report on April 28, 1982 (T.p. 585; A. 66A). On the following day they formally instituted additional charges against Holbrook by a complaint to the Office of Policy and Management, the agency for the State of Connecticut which is charged with the supervision of municipal assessors offices (Ex. 1; A. 34-35A, 68-69A). The complaint was endorsed by Nordquist as chairman and by Casazza as a member of the Board of Assessors. It accused Holbrook of violating *Conn. Gen. Stat.* § 12-62 by making unilateral changes in the assessed values of properties and with violation of *Conn. Gen. Stat.* § 12-60 by substantive changes to the grand list after it had been signed (A. 35-36A). In the course of the investigation by the Office of Policy and Management which followed, Casazza and Nordquist fleshed out their charges to the investigating committee with the following claims of specific misconduct on the part of Holbrook: (1) 17 instances in which Holbrook was alleged to have favored relatives and friends or in which she had increased assessments on the property of those in her disfavor; (2) 445 properties where "illegal" erasures appeared on the field card records of the assessor's office (later reduced to 323 when the Office of Policy and Management investigators discovered that 122 of the erasures had been made by the appraisal firm) (T.pp. 220, 269-274, 598); (3) improper reduction of the appraised value on a garage; (4) improper classification of several properties as landlocked; (5) improper

combination of two beach lots; (6) undervaluation of marinas; and (7) alteration in the value of 27 properties after the signing of the grand list (T.pp. 1151-1155, 1453-1455; A. 77-82A). In summary, Casazza and Nordquist accused Holbrook of 503 (later reduced to 381) separate violations of her duties as an assessor (T.p. 1155).

Neither Casazza nor Nordquist ever attempted to verify their charges by consulting or comparing available records in the assessor's office, by seeking the advice of other assessors, by obtaining legal counsel, by requesting an explanation of the changes from Holbrook (T.p. 64), or in any other manner (T.pp. 566, 1060, 1084, 1086, 1089, 1109, 1112, 1119, 1122, 1126, 1133, 1136, 1137, 1140, 1144, 1148, 1358, 1362; A. 27-29A, 35-37A, 66A, 74A, 78-79A). Surprisingly, Nordquist never even examined the records which she claimed evidenced misconduct in office by Holbrook (A. 27-28A) and never read the statutes which she accused Holbrook of violating (A. 36A). Casazza refused to accept or heed the advice of the state agency that Holbrook's conduct conformed to the requirements of the assessing statutes (A. 5-7A, 84-89A).

The investigation into the charges filed with the Office of Policy and Management was assigned to a committee headed by Donald Zimbowski, chief of the division of Municipal Assessors. On June 22, 1982 he issued his committee's report with the finding that each of the charges brought against the respondent by the petitioners was unfounded (A. 1-17A; T.pp. 269-273). At the suggestion of the First Selectman, he included in the report a caveat that the method of erasing used by Holbrook to correct the field cards, while not in violation of the statutes as charged, did not adhere to the preferred method of lining-out the amended entries (T.p. 250).

Although Nordquist subsided in her accusations following the report by the Office of Policy and Management, Casazza did not. He persisted in his allegations against Holbrook by further complaint to the supervisor of the Office of Policy and Management in which he not only called into

question the reliability of the investigation, the accuracy of the findings, and the integrity of the investigating committee, but repeated each of his previous accusations with two additions: violation of *Conn. Gen. Stat.* § 12-113 and that Holbrook had duped Nordquist into signing the grand list (A. 84-89A). And, for reasons which were never explained, Casazza republished these defamatory statements by providing a copy to the Middletown Press (T.(3)p. 61). The Office of Policy and Management rejected the renewed complaint as being without justification. Following the conclusion of the administrative investigations, on September 22, 1982 Holbrook served Casazza and Nordquist with a demand for retraction of their charges. They refused to do so (T.pp. 88, 594, 595; T.(3)p. 64). At the trial, Nordquist unaccountably testified that indeed she would bring the charges again (T.p. 600).

Holbrook had been active in civic and community affairs (T.pp. 94, 543) and was a well-regarded person in the community. All of the witnesses from the community (among them, the petitioners) testified that she had an established reputation for honesty, integrity, truthfulness, and for competence as an assessor (T.pp. 472, 518, 519, 615, 616, 1249, 1250, 1330, 1355; T.(2)p. 64; T.(3)pp. 55, 56). As a result of the petitioners' charges, her reputation was ruined (T.pp. 518-519, 541, 599, 1250; T.(2)p. 64); she moved to an adjoining community and her career as an assessor was sullied and destroyed (T.pp. 94-97, 474, 599, 1250, 1254). Holbrook had applied and was a strong candidate for the position of single assessor for the Town of Westbrook (T.pp. 94, 616-619) (a position created as of July 1, 1982); however she was dropped from consideration because of the controversy generated by the petitioners (T.pp. 619, 620, 667, 800; T.(2)p. 24; T.(3)p. 55). Despite 52 applications for an assessor's position, Holbrook was accorded only one interview and received no job offers (T.pp. 95-96). The Town of Westbrook hired an appraisal firm as its assessor for one year, followed by a single assessor at a salary of $7,500 (T.pp. 643, 644). On the basis of a $7,000 annual salary and the value of medical benefits furnished by the Town, Dr. Gary Crakes, an economist, projected a net economic loss to

Holbrook, over her anticipated work life as an assessor, of $181,571 (T.pp. 752-756).

Exemplary damages were limited to attorney's fees and costs (based on a one-third contingency fee agreement between the respondent and her attorney) (T.p. 100; T.(2)p. 34).

The jury affirmatively answered special interrogatories that defamatory statements had been made and published by the petitioners, that, by clear and convincing evidence, the defamatory statements found were false, and that by clear and convincing evidence, the petitioner had acted with actual malice in uttering and publishing the defamatory statements (Casazza R. 17, Nordquist R. 8-9). Verdicts, in these cases which had been consolidated for trial, were returned against each defendant which, in combination, totaled $28,000 in general damages, $181,000 in special damages, $69,667 in exemplary damages, and $7,810 in further exemplary damages (of which $3,819 was subject to remittitur) (Casazza R. 18, 24; Nordquist R. 9, 15). In the separate verdicts rendered against each petitioner, 75 percent of this combined total was awarded against Casazza and 25 percent against Nordquist. From the judgment entered on the verdicts, the defendants took a combined appeal to the Supreme Court of the State of Connecticut.

In that appeal, of the several defamatory statements which had been at issue, the petitioners challenged the finding of falsity only as to the two statements which charged the respondent with violating the state assessing statutes. All of the other statements which equally supported the verdict went unappealed. The verdict was a general one, no request having been made for interrogatories which might delineate each statement found to be false and it is presumed, therefore, that all of the defamatory statements were determined by the jury to have been falsely made. Such was the evidence. On their petition for certiorari the petitioners now readdress and request reexamination on the issue of falsity of the same two statements reviewed by the Connecticut Supreme Court on the issue of malice.

REASONS WHY PETITION SHOULD BE DENIED

The petitioners contend that *Bose Corporation v. Consumers Union of United States, Inc.*, 466 U.S. 485, 104 S.Ct. 1949 (1984) leaves the standard of review unsettled in defamation cases and that on the facts of this case an opportunity is provided to reexamine *Bose* and to extend its standard of review to issues of falsity as well as those of malice. Under *Bose,* the scope of appellate review in a defamation case is an independent examination of the entire record to determine whether it supports a finding of malice by clear and convincing evidence, with due regard to the jury's assessment of the credibility and demeanor of witnesses and a litigant's constitutional right to have all questions of fact decided by a jury.

The scope of review on appeal includes an independent examination of the entire record to determine whether the findings on the issue of malice are clearly erroneous. The term "clearly erroneous" in this context means that when, although there is evidence to support it, the reviewing court, on the entire evidence, is left with the definite and firm conviction that a mistake has been committed. *Bose Corp. v. Consumers Union of U.S., Inc.*, 466 U.S. 485, 104 S.C. 1949, 1959 (1984).

Significantly *Bose* notes "that only those portions of the record which relate to the actual malice determination must be independently assessed. The independent review function is not equivalent to a "de novo" review of the ultimate judgment itself. . . . If the reviewing court determines that actual malice has been established with convincing clarity, the judgment of the trial court may only be reversed on the ground of some other error of law or clearly erroneous finding of fact." *Bose Corp. v. Consumers Union of U.S., Inc., supra,* at 1967 fn. 31.

The purpose of the independent review is to provide assurance that the judgment does not constitute a forbidden intrusion on the field of free expression. *Bose v. Consumers Union of U.S., Inc., supra,* at 104 S.Ct. 1964. Libelous speech is not

protected by the First Amendment, and the independent review to determine whether the judgment is clearly erroneous is limited in function to the safeguard intended and not for the purpose of inserting the reviewing court as a seventh juror or as a substitute fact-finder in the case. This scope of review does not alter the general rule that evidence offered at trial should be regarded in the light most favorable to sustaining the verdict. *See, e.g., Wochek v. Foley,* 193 Conn. 582, 587 (1984); *Goodrich v. Waterbury Republican-American, Inc.,* 188 Conn. 107, 108-09 (1982).

The standards of review under *Bose* are not unsettled, and no conflict exists between this case and the applicable decisions of this court. Review of the opinion below discloses a proper regard and adherence to the constitutionally compelled standards of review introduced by *New York Times Co. v. Sullivan,* 376 U.S. 254, 84 S.Ct. 710 (1964) and subsequently elaborated in *Bose, supra.* The petitioners failed to assert below any claim that the *Bose* scope of independent review should be extended to issues of falsity as well as those of malice; rather they argued that on intermingled issues of fact and malice, such issues all fall within the *Bose* ambit of independent appellate review. This court does not ordinarily decide questions which have not been raised or involved in the lower court. *United States v. Mendenhall,* 446 U.S. 544, 551-52 n.5 (1980).

The petitioners' argument that the court below inadequately examined intermingled issues of fact and malice finds no support in the record. On the contrary, the opinion of the Connecticut Supreme Court demonstrates "independent review" of the entire record to determine whether sufficient evidence supported the jury's finding of malice by a clear and convincing standard and review of the other facts to determine whether, on the issue of falsity, the evidence furnished a reasonable basis for the jury's conclusions. *Holbrook v. Casazza,* 204 Conn. 336, 343-47 (1987). The court below plainly states that it has made an independent review of the record to determine whether the statements appealed (violation of

Conn. Gen. Stat. §§ 12-60, 12-62) were made with actual malice, that is with knowledge of the falsity or with reckless disregard of whether they were false. *Holbrook v. Casazza, supra,* at 345-46. After reviewing the evidence on these statutory violation claims which, *inter alia,* had been made by the petitioners, the court reasoned that the jury could properly have concluded that the petitioners, after learning of the respondent's initial exoneration, would avoid reckless disregard for the truth in their publications by seeking evidence corroborative of the accusations. Their failure to do so, although records were readily available, the presence of animus, the failure to investigate the facts or to seek advice from knowledgeable persons or to retract the defamatory statements after the respondent's exoneration by Office of Policy and Management evidenced the high degree of awareness of probable falsity demanded by *New York Times Co.* Nordquist made no effort to investigate and did not even read the statutes which she accused Holbrook of violating (A. 35-36A). Casazza not only refused retraction, but, after Holbrook's second exoneration, he republished the defamatory statements to the supervisor of the Office of Policy and Management investigators and to the press. This review of petitioners' conduct with respect to their accusations of statutory violation cannot under any circumstance be characterized, as petitioners have done, as a failure to independently review the evidence in order to determine whether the finding of malice was supported in the record.

The "serious doubt" standard which will support a finding of malice, as reviewed in *St. Amant v. Thompson,* 390 U.S. 727, 88 S.Ct. 1323 (1968) does not mean that libel defendants can defame with impunity merely by claiming, as petitioners do here, that they published the statements with a belief that they were true. To the contrary, a libel plaintiff may prove the defendant's subjective state of mind through the cumulation of circumstantial evidence, as well as through direct evidence. *Tavoulareas v. Piro,* 817 F.2d 762 C.D.C. Cir. (1987) citing *Herbert v. Lando,* 441 U.S. 153, 160, 99 S.Ct. 1635, 1640-41 (1979).

On the issues of falsity, the petitioners make a diffuse argument that the court below ignored, in its review, "undisputed" or "unrefuted facts." It is self-evident by the "statement of facts" and "counterstatement of facts" contained in the briefs and by those facts which are detailed and discussed in the opinion below, that there were no overlooked or undisputed facts and certainly none which might compel that the verdicts be set aside. This case turns upon its own facts and will affect no one other than the litigants. In the ordinary course of events this court does not undertake review to determine whether contested findings of fact, upheld by two courts below (the trial court and the Connecticut Supreme Court), should be set aside in the absence of obvious or exceptional error. *Graver Manufacturing Co. v. Linde Co.*, 336 U.S. 271, 275 (1949). Matters of interpretation of local statutes where federal questions are not involved are appropriately left to state agencies or state courts, and this court should intervene only in the rare instance where the standard appears to have been misapprehended or grossly misapplied. *Mobil Oil Corp. v. FPC*, 417 U.S. 283, 310 (1974). The investigation of the state agency below and its conclusion that the respondent's conduct did not violate the local assessing statutes with which she had been charged by the petitioners, and the Connecticut Supreme Court's examination and deference to that factual finding on falsity created no error in the standard of review. Nor, if error had been made in this regard, would it have affected the outcome, since, of the petitioners' multiple allegations of misconduct on the part of the respondent in her role as an assessor, the statutory violation claims represented only a small fraction of the defamatory statements published by the petitioners. Their remaining accusations of (1) favoring friends and relatives (in seventeen instances); (2) improper reduction of the value of a garage; (3) improper classification of properties as landlocked; (4) improper combination of two beach lots; (5) improper reductions for wetland impact on properties; (6) undervaluations of marinas; (7) undervaluation of farms; (8) violation of wetland statutes; and (9) duping the fellow assessor into signing the grand list, all were well established as false by the evidence and none were made the subject of appeal below or in the petition for certiorari.

CONCLUSION

For these reasons, the decision of the court below was a correct one and the petition for certiorari should be denied. The petitioners' contention that "undisputed" or "unrefuted" facts exist or were disregarded by the court below is neither true nor discernible in the record, and this case, on its own facts, is inappropriate for use as a vehicle to reexamine the constitutional review standards of *New York Times Co.* or *Bose.*

Respectfully submitted.

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No. 87-677

In The

Supreme Court Of The United States

OCTOBER TERM, 1987

TITUS J. CASAZZA,
Petitioner,

v.

JOAN O. HOLBROOK,
Respondent.

GALA H. NORDQUIST,
Petitioner,

v.

JOAN O. HOLBROOK,
Respondent.

APPENDIX TO RESPONDENT'S BRIEF IN OPPOSITION

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APPENDIX TABLE OF CONTENTS

Donald Zimbowski called by the plaintiff; testimony given on direct examination:

* * * * *

(T.p.p. 214-215)

Q. And did you interview the entire Board of Assessors, that is Holbrook, Nordquist and Casazza?

A. Yes.

Q. And did you interview the appraisal firm or revaluation company president, Mr. Viogrande (phonetic)?

A. I did.

Q. And did you also interview his job project supervisor, a Carroll Likner (phonetic)?

A. Yes we did.

Q. And as a result of your investigation and your familiarity with 12-62 of the Statutes, did you come to reach a conclustion as to whether the charge that Joan Holbrook had made unilateral changes to assess valuations was true or false?

A. False.

Q. And that appears in your report?

A. It does.

Q. Did you find that any unilateral changes had been made in violation of the Statute as Casazza and Nordquist had charged?

A. None.

Q. Now the second charge in that report of April 29th was that substantive changes had been made to the grand list subsequent to its signing contrary to General State 12-60. Did you investigate that charge while you were investigating the other?

A. Yes we did.

Q. And did you reach any conclusions?

A. Yes.

Q. Will you state briefly what that conclusion was?

A. Can I read from my notes.

Q. Sure. I think we already have them in evidence, don't we?

A. Yes.

Q. That's your report your talking about?

THE COURT: It's already in evidence.

Q. Yes, we have your report in evidence as Exhibit 4. Go ahead.

A. Therefore, the charge outlined in two above is found to be invalid. Shall I continue.

Q. No, I think that's an answer to the question.

A. OK.

Q. So all of the changes that had been referred to in paragraph two of the complaint had in fact performed legally and legitimately in the Town of Westbrook by the Board of Tax Review?

A. Yes they were.

* * * * *

(T.pp. 232-233)

Q. Now, the policy that had been followed was it in anyway to your knowledge illegal or improper?

A. To the best of my knowledge, no.

Q. All right, what was the recommendation you nevertheless made?

A. The recommendation was that accompanying these change slips should be also attached a certificate of correction, spelling out the property in the amount of reduction or increase.

Q. And would that certificate of correction be issued by the Board of Tax Review back to the assessor's office?

A. It would go from the assessor to the Board of Tax Review.

Q. And would it also return then back to the assessor?

A. A copy of.

Q. That was purely a procedural matter I take it?

A. Exactly.

Q. When you spoke to Mrs. Bushnell about the change slips that had issued in this case, did she produce the change slips for you to review?

A. Yes.

Q. And were there twenty-seven of them?

A. Yes.

Q. And did you take a look at each of those changes and make a judgment as to whether they constituted clerical errors or something else?

A. Fred and and I asked her specifically on each of the twenty-seven, why the changes were made.

Q. And did they all deal with clerical errors?

A. Yes.

Q. And in your judgment, they were all appropriate changes?

A. Yes.

Q. Did you after meeting with Mrs. Bushnell and determining this information, did you communicate that information to Mr. Casazza during the course of your investigation?

A. That I'm not sure of.

Q. Do you recall whether Mr. Casazza was advised that Mrs. Bushness had made all of the

twenty-seven changes properly, and he still contended that they were made by Holbrook, that is whether he persisted in his contention after you had given him some information to the contrary?

A. I think somewhere during investigation that did transpire.

MR. ERRANTE: I couldn't hear that I'm having difficulty hearing the witness, Your Honor.

A. Somewhere during this investigation that did transpire.

* * * * *

(T.pp. 242-244)

Q. Did Mr. Casazza discuss his views of the laws with you?

A. Yes.

Q. And did you discuss with him your interpretation of the laws?

A. Yes.

Q. And did you at any time, were you able

to persuade Mr. Casazza that your view was correct and his was incorrect?

A. I don't believe so.

Q. And this was a man that on the basis of your education, training and experience, you believe was a competent assessor or competent to be on a Board of Assessors, correct?

A. Correct.

Q. Now, in your report I believe you mentioned that Mr. Casazza charged Mrs. Holbrook with bias?

A. That's correct.

Q. And can you elaborate on that, that is can you tell us what it was that he said?

A. To the best of my recollection, he claimed that Joan Holbrook had made assessments in favor of her friends and had increased assessments on those that were not in her favor.

Q. Did you find any evidence to support that accusation?

A. None.

Q. And you looked at all of the data that Mr. Casazza supplied you with?

A. Reviewed it all.

Q. Now, with respect to the people that he claimed that she had increased assessments on because they were in her disfavor, can you recall the names of those people?

A. Would it be possible to look through the street cards.

Q. Yes. And let me see if I can refresh your recollection if that does not.

A. Casey is one.

Q. Was Casey one that he said was increased or reduced?

A. I would say increased, possibly decreased. There were many properties we had looked at.

Q. Well, I ask you to look at the card. Do you have a card there for a Mr. Wilcox?

A. Yes, increased.

Q. And did Mr. Casazza make any statements

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about Mr. Wilcox's property and Mrs. Holbrook?

A. There was much discussion, but I really don't recall.

Q. Did he accuse Mrs. Holbrook of having increased Mr. Wilcox's taxes?

A. I believe that was one of the three, yes.

Q. Was Mr. Tony or Mauro Bissacian (phonetic) another one?

A. Yes, that rings a bell.

Q. And was Mr. Willa a third?

A. What's the last name?

Q. Willa, W-i-l-l-a.

A. That I don't recall.

Q. And did you review the assessments and the assessment procedures on each of those properties?

A. Yes.

Q. And did you find any evidence of partially or bias?

A. No.

* * * * *

(T.pp. 247-249)

A. Aside from the erasures I believe he thought that some of the values were out of line.

Q. And did he discuss basis for that?

A. Yes, there was discussion.

Q. And did you review those questions of value?

A. Yes, we did.

Q. And did you find that the values were out of line as he urged, or did you find that the values were within the range of value for an assessor to put on the property?

A. In our opinion, they were within the range.

Q. Is there in terms of an assessor establishing the value for a piece of property, is there a range within which it's reasonable for the assessor to operate?

A. Yes, there are various guidelines.

Q. And I suppose, let me ask the question,

and it's possible to exceed that range by putting too high a value if you go outside the scale at one end and exceed the scale at the other end by placing too low a value on the property?

A. Yes, there are other factors involved.

Q. Can you recall how many properties you looked at where Mr. Casazza had accused Holbrook of placing an improper value on the property?

A. Could I have the question again.

Q. Yeap, I'll reframe it. Can you recall how many properties Mr. Casazza charged Holbrook with placing an improper value on?

A. The majority of the three twenty-three and the twenty-seven.

Q. And did you review all of those?

A. We did.

Q. And you found that the values were within the proper range for an assessor to establish?

A. In our opinion, they were.

Q. In the course of your investigation, did

you take a look at all or consider the timing of the work that was being done by the revaluation company headed by Mr. Viogrande (phonetic)

A. Yes, we discussed that with Mr. Viogrande (phonetic).

Q. And can you tell us whether they were timely in getting their work in or not?

A. To the best of my recollection, it was very close.

Q. By close, what do you mean, can you elaborate please?

A. Well, first of all, the Board of Assessors for the Town of Westbrook did ask for an extension which meant that the completed project probably was being delayed.

Q. When you spoke with Mrs. Holbrook, did you discuss with her the review process that she had conducted as an assessor?

A. Yes.

Q. And did she discuss with you whether or not she had done a field review on every piece of

property for which she had made a correction or change?

A. Yes.

Q. And what did she tell you?

A. She claimed she had made those reviews.

MR. ERRANTE: Your Honor, could you ask the witness to speak just a little louder, I can't see him, so it makes it a little bit more difficult for me to hear him.

THE COURT: All right, try to keep your voice.

Q. And did your investigation confirm that she had done a field review on each case where she had made a change or correction?

A. Aside from asking Joan Holbrook if she had reviewed them in the field, I went out and reviewed them myself.

Q. And did you confirm the values that she had arrived at in terms of being within a legitimate range for an assessor to establish?

A. Yes, I did.

Q. You issued a report of your investigation and can you tell me on what date that report was issued?

A. It was submitted to Mr. Morrison on June 22nd.

Q. That would be 1982?

A. 82, right.

* * * * *

(T.pp. 269, 270)

Q. Did Mr. Casazza at any point address a complaint to you in which the substance of it being that based on individual records that he was supplying Mrs. Holbrook had reduced values on properties in which her husband had some ownership interest?

A. Yes, that was discussed.

Q. And did you review the records that were supplied and available?

A. We reviewed everything that Mr. Casazza had submitted to us.

Q. And did you find any evidence that that

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accusation was true?

A. No evidence.

Q. I think you said before that Mr. Casazza made a complaint that some properties were improperly classified as landlocked by Mrs. Holbrook?

A. It's true.

Q. And did you find any evidence that that was so?

A. I don't recall a specific property that Mr. Casazza requested we look at, but I'm sure it was the valuation we were concerned in and the landlocked had to do with the value of the property.

Q. Did you find any evidence of any merit to his contention?

A. No.

Q. Did Mr. Casazza address to your attention a complaint with respect to a piece of property on which a garage was located and operated by a Mr. Woodstock that the value had

been improperly reduced by Mrs. Holbrook as an assessor?

A. Yes, we reviewed that property.

Q. And did you find that there was any truth or merit to that contention by Mr. Casazza?

A. No truth.

* * * * *

(T.pp. 273, 274)

Q. And was their signing of the abstract the actual valuation by the assessors of all that property that was on the list?

A. That's true.

Q. Is there any requirement by regulation Statute or otherwise that you're aware of that requires two assessors to go out and examine a piece of property that's being reviewed and to concur in any change on the field card?

A. Generally in cases of Boards of Tax Review, individuals from the Board do their own review.

Q. There is no requirement, I take it, if

there's gonna be change from a reval company suggested appraisal that it has to be concurred in at the time of the change by a majority of assessors?

A. It should be approved by the majority, any changes.

Q. And that approval you've said is the signing of the abstract itself?

A. That's true.

Q. When Mr. Casazza originally presented his complaints and his list of the properties on which he claimed something was wrong, did he tell you that, or did he accuse Mrs. Holbrook of having changed all four hundred and twenty-five values?

A. Yes.

Q. And it ws during your investigation, I take it, you discovered that a hundred and some odd had been done by the reval company rather than Mrs. Holbrook?

A. That's true.

* * * * *

The defendant Gala Nordquist, called by the plaintiff: testimony given on direct examination:

* * * * *

(T.pp. 555-560)

Q. And in the assessors office, is it true that your work was limited to clerical work?

A. Yes.

Q. You stuffed envelopes, typed labels and so on?

A. Yes.

Q. And Joan Holbrook actually did all of the assessing work?

A. Yes.

Q. And Mr. Casazza wasn't in the office very often, was he?

A. No.

Q. Now, do you remember the revaluation beginning sometime in 1980?

A. Yes.

Q. And Joan continued to do all of the assessors portion of the work during the

revaluation?

A. Yes.

Q. And you sat across the desk from her in the same office and talked with her from time to time during almost everyday, isn't that true?

A. Yes.

Q. And did Westbrook hire an appraisal firm to assist the Board of Assessors during the revaluation?

A. Yes.

Q. Was that Lescher Glendenin (phonetic)?

A. Yes.

Q. And was its principal a Mr. Viogrande?

A. Yes.

Q. And is that the same person who's been sitting here in the court virtually everyday during the trial?

A. Yes, he's been here.

Q. Is he sitting here in the courtroom now?

A. Yes.

Q. And can you point him out please?

A. He's right there.

Q. Well, is he the gentleman with the hand up and the dark hair and glasses?

A. Yes.

Q. Now, the purpose of the revaluation was to reappraise and reassess all of the property in Westbrook, wasn't it?

A. Yes.

Q. And the appraisal company made use of the Town records in their work?

A. Yes.

Q. And did appraisal company employees come into the office on a regular basis?

A. Yes.

Q. And did they confer with Joan about the values that were being placed on properties?

A. Occasionally yes.

Q. And did you participate in those conversations or simply listen to them?

A. I heard bits and pieces, but I was never included in the discussions.

Q. None excluded you, did they, you could have joined in had you cared to, wasn't that true?

A. Yes, I believe so.

Q. But the appraisal company employees never came to you and spoke to you about assessing matters, did they?

A. No.

Q. And they did not speak to Mr. Casazza either because he wasn't around, isn't that true?

A. Can I explain something why Mr. Casazza wasn't there.

Q. His attorney can ask you for the explanation, my question is more limited.

A. Oh, OK.

Q. They didn't speak to him because he wasn't around, isn't that true?

A. He was, I wouldn't say he wasn't around all the time. He did come in.

Q. And how often did he come in?

A. Now that I don't recall.

Q. And for a period of time we heard from

Mr. Casazza, he was in the office doing work of the revaluation company by transferring data onto the field cards, and is that what you meant by he was around for a period of time?

A. Yes.

Q. And he said that that happened from September to November, if I recall his testimony correctly, would you agree with that?

A. Yes, I believe so.

Q. Would you agree that you lacked the necessary skill or training to involve yourself in determining property values?

A. Yes.

Q. And you were not even aware of the standards that were used by assessors to determine property values, were you?

A. No sir.

Q. And you were unfamiliar with how adjustments to value were made based on property limitations, such as wetlands or landlocked property or unbuildable lots or interior lots, you

were unfamiliar with how to go about making any adjustments to base value for those considerations, isn't that true?

A. Yes.

Q. And Joan Holbrook during the period of the revaluation, was she going out and inspecting properties?

A. I don't recall.

Q. Would you agree that it was assessors who had the final say in determination in the value to be placed on any property, rather than the appraisal company?

A. Well, my feelings on that is we hired the company to come in and do this for the Town, and I would assume the assessors have the last word, yes.

Q. I didn't hear your answer, I'm sorry.

A. I would assume that the assessors would have the last word.

Q. Now, the appraisal company was running late in getting their work in to Joan Holbrook,

isn't that true?

A. Yes.

Q. And at what point in time, did you observe revaluation company employees working in the Westbrook Town Hall but working on a revaluation for another community?

A. That I'm not aware of, I don't recall.

Q. You have no memory of seeing revaluation company employees working on a reval for Orange?

A. I don't recall.

Q. And would you agree that time in this revaluation process was becoming critical late in 1981?

A. Yes.

Q. And an extension of time was obtained from January 31st to February 28th, isn't that true?

A. Yes.

Q. And the assessors abstract then had to be signed by the end of February, that was a requirement of law that you knew about, correct?

A. Yes.

Q. Now, among your clerical duties, were you assigned the task of taking the figures that had been reviewed and corrected by Joan on the field cards and taking them to the computer company that was printing up the abstract for the Town?

A. Would you repeat that again please?

Q. Yes, I will. As part of your clerical duties, did you take the corrections that Joan Holbrook made to certain records and transport them to the computer company or send them to the computer company which was printing up the abstract?

A. Yeah, I guess so.

* * * * *

(T.pp. 566-571)

Q. Now at the time you signed the abstract you were satisfied that all of the entries in the abstract were proper, isn't that true?

A. Yes.

Q. And Mr. Casazza was in the Town Hall at that time too, wasn't he?

A. Yes.

Q. But he refused to sign the abstract, isn't that true?

A. Yes.

Q. And he offered no criticism of the work at that time did he?

A. No. He just wanted to review the books.

Q. And had anyone ever denied him access to the records to your knowledge?

A. No.

Q. Did anyone ever deny you access to any of the assessor's records?

A. No.

Q. And you'll agree I think that to validate the abstract it required the signature of the majority of the Board of Assessors meaning two out of the three?

A. Yes.

Q. And you knew that at the time you signed

it, isn't that true?

A. Yes.

Q. Now at the time you signed the abstract you were satisfied that all of the entries in the abstract were proper, isn't that true?

A. Yes.

Q. And after signing the abstract you never went back to review any of the entries, did you?

A. No, I didn't.

Q. And you never went back to Joan Holbrook at any time after you had signed the abstract and asked her to explain to you any of the corrections or changes that had been made of the revaluation company's work on some properties, isn't that also true?

A. I have to answer yes or no?

Q. Yes.

A. Yes.

Q. Now Joan Holbrook never made any changes or alterations in the grand list after you both signed it, did she?

A. That I don't recall.

Q. Well let me again refer to your deposition. See if this refreshes your recollection. Referring you to the question that begins at line twenty, would you just read that please?

MR. ERRANTE: What page?

MR. SULLIVAN: Twenty-eight.

Q. Would you like me to repeat the question?

A. My answer is no.

Q. I know you mean Joan never made any alterations to the grand list after it was signed, did she?

A. To my knowledge, no.

Q. And after you had signed the grand list you never went back to review any of the entries that had been made in it, did you?

A. No.

Q. Now were you aware that just after Joan returned from vacation on the fourteenth of

January, that she questioned Titus Casazza on the ethics of his having obtained a reduction in value on his own property?

A. Would you repeat that?

Q. Yes. Were you aware that Joan Holbrook, shortly after January fourteenth, accused Mr. Casazza of having acted unethically in obtaining a reduction in value on his own property?

A. No, I'm not aware of that.

Q. You never heard that before?

A. I knew of it but I don't recall if it was after vacation or before vacation or when it was exactly.

Q. But you do know that it occurred before Mr. Casazza brought any charges or accusations against Mrs. Holbrook, don't you?

A. Yes.

Q. Now to your knowledge Mr. Casazza never bothered examining any of the assessor's records prior to February 23, did he?

A. Right.

Q. But after February 23, he began burrowing into the assessor's records, isn't that true?

MR. PESKA: Object to that characterization.

MR. SULLIVAN: You mean to burrow?

MR. PESKA: I'm sure you can think of another word.

CONTINUED DIRECT EXAMINATION BY MR. SULLIVAN

Q. He began examining the assessor's records after the abstract had in fact been signed on February 23?

A. Am I allowed to just say yes or no or could I comment on--

Q. You're allowed to say yes or no if the question can fairly be answered yes or no, and I'll leave it to your attorney to bring out any explanations you may want to add later.

A. OK, ask me that again.

Q. Sure. Mr. Casazza first began to examine the assessors records on or after February

23rd?

A. Yes.

Q. And about a week later, that is just about the beginning of March, he first brought to your attention that many of the field cards had had their values changed from what the reval company had initially put on them, isn't that true?

A. Yes.

Q. And that the method of doing this had been by erasing the figures corrected and simply writing in the new figures?

A. Yes.

Q. And he told you that the erasures on these cards were wrong, didn't he?

A. He just explained to me that there were erasures.

Q. Well, will you look at Page 33 of the deposition transcript you're holding in your lap. The question at the very top of the Page.

A. My answer is yes.

Q. Let me repeat the question to you. Titus told you that the erasures were wrong, isn't that true?

A. Yes.

Q. And you believed him, isn't that also true?

A. Yes.

Q. When he said that you believed him?

A. Yes.

Q. Now, nevertheless, you've already said you never went back and asked Mrs. Holbrook to explain any of the changes or corrections, isn't that true?

A. Yes.

Q. Now, Mr. Casazza thereafter prepared a list of about four hundred and forty-five properties on which erasure type corrections had been made in the field cards?

A. Yes.

Q. And he also prepared a list of twenty-seven properties for which changes had been

made in the assessments after you and Joan Holbrook had signed the abstract of February 23rd?

A. Yes.

Q. And he told you that Joan Holbrook had made those twenty-seven changes in the grand list after you had signed it, didn't he? By he, I mean Titus Casazza.

A. Yes.

Q. And you believed him again didn't you?

A. Yes sir, I did.

Q. Coming back to the business of your role on the Board of Assessors, it had always been of a clerical nature?

A. Yes.

Q. But you understood that the revaluation company as an appraisal company simply was assisting the assessors?

A. Yes.

Q. And you knew that the ultimate determination of value as an assessors responsibility and not the appraisal company's?

A. Yes.

Q. And knew that Joan Holbrook was the only member of the Board with the skill and competence to determine property values?

A. Yes.

Q. And that was exactly the work that she'd been doing, isn't that true?

A. Yes.

Q. Now, Mr. Casazza was not only questionably qualified for this work, but he was not around to do it, was he?

A. No.

* * * * *

(T.pp. 587-589)

Q. Now, after the meeting of April 28th in the selectman's office with Town Counsel, Mr. Casazza prepared a letter for you and he to sign, that is he gave you the contents of a letter, isn't that true?

A. Yes.

Q. And you typed up the letter?

A. Yes.

Q. And that's the letter you sent to O.P.M.?

A. Yes.

Q. Showing you exhibit 1 and is that the letter that we're talking about?

A. Yes, it is.

Q. You typed it up on April 29th of 1982?

A. Yes.

Q. You signed it on that date?

A. Yes.

Q. Did Titus sign it in your presence?

A. Yes, he did.

Q. And you signed it as chairman now of the Board of Assessors for the Town of Westbrook, isn't that true?

A. Yes.

Q. And Mr. Casazza signed as a member of the Westbrook Board of Assessors?

A. Yes.

Q. And in that letter, you accused Joan

Holbrook of violating two Statutes having to do with assessing?

A. Yes.

Q. Statute 12-62 and Statute 12-60, is that correct?

A. Yes.

Q. Had you ever read either one of those Statutes before you signed that letter?

A. The first one where it says the changes were made unilaterally, I didn't read the Statute, because I figured this was what it was all about.

Q. Isn't it true that you never read either one of those Statutes before you made those charges?

A. Yes sir.

Q. And isn't it also true that you have never read those Statutes?

A. Yes.

Q. Not since the charges were made, you've never resorted to the Statutes?

A. No.

Q. And before you sent that charge against Joan Holbrook to O.P.M., you didn't consult a lawyer, did you, and ask his advice about the meaning of the Statutes?

A. No.

Q. And you didn't consult any other assessor?

A. No.

Q. The only person you consulted with was Titus Casazza?

A. There were other people that were involved.

Q. The only person you consulted with in making the charges was Titus Casazza, isn't that true?

A. Yes sir.

* * * * *

(T.pp. 592-593)

Q. And the conversations that you had with the reporters had to do with the controversy, that is the charges that you were making against Joan

Holbrook, isn't that true?

A. No.

Q. You never talked about the charges to them.

A. It was topic of conversation.

Q. Were you present in the courtroom when Mr. O'Brien testified?

A. Yes sir, I was.

Q. And did you hear him say that he had spoken to you on several occasions about the matters in controversy?

A. Yes.

Q. And you did speak to him on a number of occasions about the controversy of the assessors, isn't that true?

A. Yes.

Q. And you also spoke, when you spoke to Mrs. Frattini on an almost daily basis frequently spoke of the controversy involving the assessors, isn't that true?

A. No, that's not true.

Q. Did you ever talk to her about the controversy involving the assessors?

A. No, I didn't.

Q. It was a topic that never came up between you and Mrs. Frattini?

A. No.

Q. Coming back to your charges of April 29th in exhibit 1, without having read or reviewed either Statute and without consulting anyone for legal advice or consulting any assessor for an assessor's advice, you brought these charges against Joan Holbrook in your capacity as chairman of the Westbrook Board of Assessors?

A. Yes.

Q. Now, O.P.M. is short for Office of Policy and Management I understand?

A. Yes.

Q. Is that your understanding as well?

A. Yes.

Q. And was that your understanding in 1982?

A. Yes.

Q. And did you also understand that the Office of Policy and Management was an agency of the government of the State of Connecticut?

A. Yes sir, I did.

Q. And did you also understand that the Office of Policy and Management was the government agency that supervised assessors offices throughout the State?

A. Yes.

Q. Now, the O.P.M. sent in a team of two men to investigate your charges, isn't that true?

A. Yes.

Q. And those two men were Mr. Donald Zimbouski and Mr. Fred Schumora (phonetic)?

A. Yes.

* * * * *

The defendant Titus Casazza, called by the plaintiff; testimony furnished on direct examination:

* * * * *

(T.(2)pp. 89)

Q. You had no particular education or training as an Assessor before March of 1981, did you?

A. No sir. Only as an appraiser.

* * * * *

(T.(2)pp. 92-95)

Q. You were aware that course in assessing were actually given at the University of Connecticut, were you not?

A. Yes, sir.

Q. But you never took any of those courses?

THE WITNESS: No.

THE COURT: All right.

BY MR. SULLIVAN:

Q. And the time you were appointed as Assessor for the first time in March of 1981, no

one explained assessing duties to you, did they?

A. Prior or at that time, sir?

Q. At that time.

A. Yes. We had discussions, yes.

Q. Can we have Mr. Casazza's Deposition transcripts, please? Did you bring any papers to the stand with you, Mr. Casazza?

A. Papers? Yes, sir.

Q. And did you bring your Deposition transcripts with you?

A. No, sir. No, sir.

Q. The last question I asked of you was when you were appointed as an Assessor, did anyone explain the duties of assessing to you?

A. When I was appointed, sir, in the course of my working the duties were explained to --

Q. The question requires if you can do it, a yes or no answer. Let me, do you recall your Deposition being taken in my office on four different half days or part days?

A. Yes, sir.

Q. And you reserved the right to review and sign the transcript before it became an official transcript of your Deposition, did you not?

A. Yes, sir.

Q. And were you represented by an attorney, in the fact Mr. Errante sitting over here?

A. Yes, sir.

Q. At each of those Depositions?

A. Yes, sir.

Q. Well, just for the purpose of refreshing your recollection, if you look at the bottom of page 19 and the top of the following page, the time your Deposition was taken the answer to your question was no. It is actually not really, wasn't it?

A. Yes, sir. That is when I was appointed, sir.

Q. Now, we have reviewed your education and training and work experience?

A. Yes, sir.

Q. And you have had no law training in your

life, have you?

A. I don't know how to explain that, sir. While I was in the Fire Department --

Q. Would you look at page 20 of the Deposition transcript, that's before you and see if that helps you explain your answer to the last question? Do you see where you were asked the question? Did you ever have any law training of any kind. And your answer was no?

A. Yes, sir.

Q. Is your answer still no?

A. Well I don't really know how to qualify it.

Q. I am not asking you to qualify it, you did answer no at the time?

A. That's right, sir, yes.

Q. And you were never certified as an appraiser, were you?

A. I had completed a course in appraisal.

Q. My question is whether you are certified?

A. No.

Q. And you were never certified as an assessor, were you?

A. No, sir.

Q. But you formed your idea of assessing duties entirely on your own, isn't that true?

A. No, sir.

Q. Would you look at page 21 of your Deposition transcript -- by the way this Deposition was given under oath --

A. Yes, sir.

Q. At the time, was it not? At the top of page 21, you see the question, So it was pretty much one of self teaching it as you describe it as to being an assessor, and your answer was, Yes, I'd say that, yes.

A. May I read?

* * * * *

(T.(2)pp. 97)

BY MR. SULLIVAN:

Q. You did say at your Deposition that as

to being an assessor you were pretty much self taught?

A. As far as the statutes.

* * * * *

(T.(2)pp. 98)

A. I know that at that point I didn't know at that time, sir.

Q. You knew she was Chairman of the Board of Assessors?

A. Yes, sir.

Q. And the work that you did as an assessor was done under the direction of Mrs. Holbrook?

A. Yes, sir.

Q. Now, prior to January 7th od 1982, I think you testified briefly the nature of your work in the office was to write land data on field cards for the Reval. Company?

A. Yes, sir.

* * * * *

(T.(2)pp. 100-102)

Q. The revaluation was under way at the

time of your appointment to the Board, isn't that true?

A. Yes, sir.

Q. And Holbrook, Joan Holbrook that is, was doing the majority of the assessor's work?

A. Yes, sir.

Q. And she received field cards from the Reval. Company?

A. Yes, sir.

Q. And she did the review of those cards, herself?

A. Yes, sir.

Q. And she reviewed them for errors?

A. Yes, sir.

Q. And you did not review the field cards for errors?

A. No, sir.

Q. And Nordquist did not review the field cards for errors?

A. Yes, sir, she did.

Q. She did?

A. Yes, sir.

Q. Did she do that in your presence, prior to February 23, of 1981?

A. Yes, sir.

Q. Were you here when Mrs. Nordquist testified about her work as an assessor?

A. Yes, sir.

Q. But you are saying you observed her reviewing field cards for errors prior to February 23 of 1981?

A. Yes, sir. One week.

Q. And that was the week that Mrs. Holbrook was on vacation?

A. Yes, sir.

Q. And January 7, 1982 to January 14?

A. Well, January 6 was when I went in to the 14th.

Q. Now, apart from Mrs. Nordquist's participation in the review during that week of Mrs. Holbrook's absence, neither you nor Mrs. Nordquist participated in reviewing the field card

data, did you?

A. I wouldn't know, sir.

Q. Well you never corrected any errors on the field cards submitted by the Reval. Company, did you?

A. Myself, personally, no, sir.

Q. Yes. And you never rechecked the data in the work box, did you?

A. No, sir.

Q. And you never sent the work back to the computer company for revision?

A. No, sir.

Q. You never checked the computer printout for further errors, did you?

A. Yes, sir.

Q. Was that after February 23 or before?

A. After February 23, sir.

Q. Now, the final abstract was printed up by the computer company and that became, once it was signed by the majority of assessors, the grand list for the Town of Westbrook for October 1st of

'81, can we agree on that?

A. Yes, sir.

Q. And Holbrook was the primary workhorse during the revaluation.

A. Yes, sir.

* * * * *

(T.(2)pp. 104-106)

BY MR. SULLIVAN:

Q. Can we agree that Mrs. Nordquist was doing only clerical work in the Assessor's office?

A. For the period I saw her I would agree, what she was doing when I wasn't there I have no knowledge.

Q. Now, you were unaware of changes or corrections being made by Mrs. Holbrook during the revaluation period, isn't that true?

A. That's right, sir.

Q. And you would agree that it's the sole responsibility of the assessors to place the final value on property in the Town of Westbrook?

A. Yes, sir, the assessors, right, sir.

Q. Would you also agree that there were more than five thousand parcels of real estate in Westbrook to be revalued during the revaluation of 1981?

A. Yes, sir.

Q. And the function of that appraisal or Revaluation Company was to act as an aid to the Board of Assessors?

A. Yes, sir.

Q. Now a field inspection of each property was necessary for the revaluation, isn't that true?

A. Yes, sir.

Q. And apart from one street, were you unaware of what field inspections were being done by Mrs. Holbrook during the revaluation?

A. "Apart from one street", I don't know what you mean, sir.

Q. You were aware of the case of one street Mrs. Holbrook had gone out and inspected the

properties and one particular street, isn't that true?

A. One area, sir, I don't know.

Q. What was the area?

A. Old Mail Trail, sir.

Q. Is that more than one street?

A. Well, the area, in through that area, yes, sir.

Q. Apart from that you were unaware of what field inspection she may have been doing?

A. I was unaware, sir.

Q. Now when -- strike that. You did not review any field cards until after February 23 of '82?

A. That's right, sir.

* * * * *

(T.(2)pp. 110-111)

Q. In the month of September, you put in a total of twenty-nine hours, isn't that true?

A. That's right, sir.

Q. And in the month of October, you worked

a total of seventy-nine hours?

A. That's right, sir.

Q. And the month of November, for the whole month, you put in fifty-four hours?

A. Right, sir.

Q. And then in December you were back down to eighteen hours?

A. Right, sir.

* * * * *

(T.(2)pp. 113-114)

Q. And you knew that the abstract was assigned by a majority of the assessors on February 23 at the Town Hall?

A. Yes, sir.

Q. And the people that signed it were Mrs. Holbrook, Chairman of the Board and Mrs. Nordquist?

A. Yes, sir.

Q. You were present in the Town Hall when that abstract was being signed, weren't you?

A. Yes, sir.

Q. You were aware, however, were you not, that once the abstract was signed by a majority of the assessors, it became the grand list and placed the official values on property in the town?

A. Yes, sir.

Q. Did you also know that the grand list, once it was assigned by the assessors, went to the Board of Tax Review?

A. Yes, sir.

Q. And did you know that the Board of Tax Review sat for a period of one month?

A. Yes, sir.

Q. And did you know that their function was to review the grand list for any errors and to accept appeals from interested property owners?

A. Yes, sir.

Q. But at the time all this went on you did not understand the Board of Tax Review procedures for making changes in the value of property, did you?

A. Other than the statutes, sir.

Q. Well you had never sat on a Board of Tax Review?

A. No, sir.

Q. Do you still have that transcript of the Deposition?

A. No sir, I returned it.

Q. Referring you to page 67 of your Deposition, do you remember being asked the question, now do you understand what the procedure was for making changes on the part of the Board of Tax Review in 1982, and your answer was no. Isn't that true?

A. That's right, sir.

Q. It was a no?

A. That's right.

* * * * *

(T.(2)pp. 118-119)

Q. You were asked the question what law prohibits an assessor from recommending changes to the Board of Tax Review?

A. Yes, sir.

Q. And your answer was, I don't know that there's any specific law, wasn't it?

A. Yes, sir.

Q. You didn't say anything about the §12-62 at that time, did you?

A. No, sir. But in all my previous --

Q. No question is pending.

A. Sorry.

Q. You will agree that in this case, the Board of Tax Review made changes in property values in response to change notice issued to the Board by Mrs. Holbrook?

A. Yes, sir.

* * * * *

(T(2)pp. 120-121)

Q. You had never participated in a re-evaluation before, had you?

A. No, sir.

Q. And did you not know who made corrections in assessor's field cards after the Board of Tax Review had made the change in

property value, did you?

A. Yes, sir. I did later on, yes.

Q. But at the time these events went on, you did not know, did you?

A. No, sir.

Q. Now you said before that Mrs. Holbrook was on vacation for a week from you said January 6th to the 13th?

A. Yes, sir.

Q. Prior to Mrs. Holbrook returning from vacation, was the appraised value on your land reviewed by the Reval. Company?

A. Yes, sir.

Q. An was it reduced by an amount of twenty-three hundred dollars?

A. Yes, sir.

Q. And was that reduction based on a claim by you that part of your property was swampy?

A. Yes, sir.

Q. And did that reduction occur while Mrs. Holbrook was in fact on vacation?

A. No, sir.

Q. It did not occur between January 6th and January 14?

Q. No, sir. Not to my knowledge.

Q. When do you claim that that reduction was in fact made?

A. I don't honestly know, sir. I wasn't aware of it until the 19th.

Q. Well are you saying it could not have occurred between January 6th and January 14?

A. Yes, sir.

Q. That's what you are saying?

A. Yes, sir.

Q. But all you know about it, it was made prior to the 19th?

A. Yes, sir, that I know.

Q. And did that reduction come about in connection with a request made by you to Mr. Vigrande of the Reval. Company?

A. No, sir.

* * * * *

(T.(2)pp. 125-126)

Q. After Mrs. Holbrook returned from vacation, did she accuse you of abusing her office as assessor in obtaining that reduction on your own property?

A. Yes, sir.

Q. And did she tell you that other properties on your street were subject to the same problem?

A. Yes, sir.

Q. Did she tell you that if the value was reduced for your property, other properties similarily situated ought to be similarily treated?

A. Yes, sir.

Q. Did the other properties on the street receive a reduction in values similar to yours?

A. Not to my knowledge, sir.

Q. You were the only one that got a reduction?

A. Yes, sir.

* * * * *

(T(2)pp. 130-131)

Q. Will you agree that the accusation made against you initially by Mrs. Holbrook was done orally?

A. Yes, sir.

Q. And it was done to you and not to anyone else?

A. Yes, sir.

Q. Will you also agree that that accusation was made to your face before you brought any charges against Mrs. Holbrook to OPM?

A. Oh, yes, sir.

Q. The accusation that Mrs. Holbrook made orally to you was that it is unethical of you to obtain a reduction on your own property while you were an assessor?

A. Yes, sir.

Q. Now, prior to February 23 of 1982, you had no criticism of Mrs. Holbrook's conduct as an assessor, had you?

A. No, sir.

Q. But, it was on February 23 that the majority of assessors signed that grand list and you refused to sign?

A. Yes, sir.

Q. And your criticism of Mrs. Holbrook was made only after that date?

A. Yes, sir.

* * * * *

(T.(2)pp. 132)

A. No, sir. They weren't in the Assessor's possession.

Q. So you say, Mr. Casazza --

A. Beg your pardon?

Q. So you say, but the records at all times were kept in the Assessor's office?

A. No, sir.

Q. Well, prior to February 23rd, were the records kept other than in the Assessor's office?

A. Yes, sir.

* * * * *

(T(2)pp. 138-140)

Q. And on or shortly after February 23, you began to examine the assessor's records and in particular the field cards?

A. Not on or before, on February 23, exactly, that was the first day I came in to make my review.

Q. That's when you first began this review process?

A. Yes, sir.

Q. And in doing that you prepared a list of some four hundred forth-five odd properties as to which you noticed that erasures had been made on the field cards and corrected figures written in?

A. Not necessarily erasures, sir, they were questions that I wanted to ask the Reval. Company at the same time when I prepared that list.

Q. Well were the bulk of them erasures?

A. Bulk of them were erasures, yes, sir.

Q. And you prepared this list before March 4th of 1982, didn't you?

A. March 2nd was the day I finished, yes, sir.

Q. And you also prepared a list of twenty-seven properties where the assessed values had been changed after the grand list had gone to the BTR, Board of Tax Review?

A. Yes, sir.

Q. Showing you a document marked Plaintiff's Exhibit 5, is that the list of more than four hundred properties that you had prepared by March 2nd?

A. Yes, sir.

Q. And you began preparing that exactly on February 23 of 1982?

A. Yes, sir.

Q. And showing you a document marked Plaintiff's Exhibit 6, is that a list that you also prepared?

A. Yes, sir.

Q. Was that also prepared on March 2nd of 1982?

A. No, sir.

Q. When was that prepared?

A. Sometime the beginning of April.

Q. And is that the list of twenty-seven properties for which you claim that changes had been illegally made after the abstract had been signed?

A. It's not a list of twenty-seven, sir, that's the original list which shows my corrections on here, these are my entries that showing that some of these were proper.

Q. We will refer to this as a list of twenty-seven.

A. Fine.

Q. Are there twenty-seven properties on there?

A. Yes.

Q. Did you write each property on that list?

A. Yes, sir.

Q. And did you submit that list to OPM?

A. No, sir.

Q. Did you submit that to the Connecticut State Assessors Investigator Team?

A. No, sir.

Q. Did you submit that list to the First Selectman in the Town, Mr. Morrison?

A. No, sir.

Q. You mean you didn't submit that list to any of those people?

A. Yes, sir.

Q. Did you hear Mr. Zimbouski (phonetic) testify?

A. Zimbouski?

Q. From OPM?

A. I am sorry, I did.

Q. So you furnished that list of twenty-seven to OPM?

A. Yes, sir.

Q. And you furnished the list of the four hundred forty-five to OPM as well?

A. Yes, sir.

Q. Thank you. And all of this was done sometime after Mrs. Holbrook had orally accused you of acting irresponsibly as an assessor?

A. Yes, sir, I would have to say that.

* * * * *

(T.(3)pp. 4-5)

Q. Now, before bringing any of these accusations against Mrs. Holbrook, did you ever consult a lawyer?

A. No.

Q. Did you ever consult another assessor except for Mrs. Nordquist, perhaps?

A. No.

Q. Did you ever consult anyone else?

A. No.

* * * * *

(T.(3) 10-11)

Q. Now, on April 28th, was that the date at which you first saw the Assessors' Association Report?

A. Yes, sir.

Q. And was that the report that was signed by Mr. Callahan?

A. Yes, sir.

Q. And did you, on that same date meet with Mr. Morrison?

A. Yes, sir.

Q. And was the purpose of the meeting to discuss the findings of the State Assessors' Association?

A. Yes, sir.

Q. And did someone else attend that meeting?

A. Yes, sir.

Q. Was that Town Counsel for Westbrook, a man named John Larson?

A. Yes, sir.

Q. Anyone else attend the meeting?

A. Mrs. Nordquist.

Q. Anyone beyond that?

A. No, sir.

Q. Now, you disagreed with the findings of

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the State Assessors Association, isn't that a fair statement?

* * * * *

(T.(3)pp. 11-14)

A. Yes, sir.

Q. And did you and Gala Nordquist meet to decide what to do about it?

A. No, sir.

Q. Well, the following day on April 29th, did you prepare the contents of a letter to OPM?

A. Yes, sir.

Q. And did Mrs. Nordquist type that letter containing certain charges?

A. Yes, sir.

MR. SULLIVAN: Can I have Exhibit 1, please?

BY MR. SULLIVAN:

Q. Showing you Plaintiff's Exhibit 1, that is the document that we're discussing.

A. Yes, sir.

Q. And you will agree that you suggested

the contents and Mrs. Nordquist typed it up?

A. Yes, sir.

Q. Did you have any discussions with Mrs. Nordquist before this document was prepared?

A. Yes, sir.

Q. And did you do that in a meeting with her?

A. Yes, sir.

Q. On April 29th, did you sign that document?

A. Did I sign it, sir?

Q. Yes.

A. Yes, sir.

Q. And did Mrs. Nordquist sign it in your presence?

A. Yes.

Q. And did you give it to Mr. Morrison to mail it for you?

A. Yes, sir.

Q. And the charge of Mrs. Holbrook having violated the two State statutes referred to in

that exhibit, were entirely your own idea, isn't that true?

A. No, I spoke with Mrs. Nordquist.

Q. You spoke with Mrs. Nordquist?

A. Yes, sir.

Q. And did she agree to submit charges Ed (sic) Holbrook had violated the State's statutes?

A. Yes, sir.

Q. Did you know at the time that she had not read the statutes?

A. I presented them to her at that time and I told her to read them.

Q. Did she read them in your presence?

A. No, sir. She didn't read them, she said I read them, I trust you.

Q. Would you look at page 206 of your Deposition, Mr. Casazza? Lines 16 through 19, and I will again ask you the same question as you answered a moment ago. Was the idea of charging Mrs. Holbrook with these two statutory violations entirely your own idea?

A. No, sir.

Q. At the time of your Deposition, did you not say it was entirely your own idea?

A. If you follow down below that, it's explanatory. You are confining me to just that one particular answer.

Q. Well, did you answer that it was entirely your own idea?

BY MR. SULLIVAN:

Q. That it was entirely your own idea?

A. Yeah.

Q. And then isn't it so that you told Mrs. Nordquist you told her that Holbrook's conduct violated the State's statutes?

A. No, I didn't tell her, sir.

Q. Well, at the time of your Deposition, will you look at page -- lines 20 through 23 on that same page?

A. Yes, sir.

BY MR. SULLIVAN:

Q. That it was entirely your own idea?

A. Yeah.

Q. And then isn't it so that you told Mrs. Nordquist you told her that Holbrook's conduct violated the State's statutes?

A. No, I didn't tell her, sir.

Q. Well, at the time of your Deposition, will you look at page -- lines 20 through 23 on that same page?

A. Yes, sir.

* * * * *

(T.(3)pp. 16-24)

Q. Prior to that time, had Nordquist ever said to you that she thought that Mrs. Holbrook had violated the State statute?

A. Yes, sir.

Q. Would you look at page 207 of your Deposition? Lines 13 through 20.

A. Yes, I see it.

Q. Let me ask you the question again. Did Nordquist ever say to you that she thought a State statute had been violated by Mrs. Holbrook's

conduct?

A. My answer was no.

Q. And you are the ones that brought the statute to her attention, isn't it so?

A. The State statute itself, sir, yes.

Q. Now, in entering these charges, and I am referring now the charges of violating Connecticut General Statutes -- withdraw that. Connecticut General Statute 12-62 is one of the charges you brought against Mrs. Holbrook in that letter to OPM April 29th?

A. Yes, sir.

Q. And that's a statute that has to do with the conduct of municipal assessors?

A. Yes, sir.

Q. And in that same letter to OPM of April 29th, you also charge Mrs. Holbrook with violating State Statute 12-60?

A. Right, sir.

Q. And that's also a statute which governs the conduct of municipal assessors?

A. Yes, sir.

Q. In bringing these charges against Mrs. Holbrook of having violated State statutes governing the conduct of assessors, you had not consulted with any attorney?

A. No.

Q. And you had not consulted with any other assessors except for Mrs. Nordquist, as you have said?

A. Yes, sir.

Q. And in fact you had not consulted with anyone else about these charges?

A. That's right.

Q. You simply examined the texts of these two statutes and made them the basis of your charges?

A. Yes, sir.

Q. Is that a fair statement?

A. Yes, sir.

Q. And in doing that, you didn't examine any of the cases that the courts had reported

concerning interpretation of these statutes, did you?

A. No, sir.

Q. And was your claim that Mrs. Holbrook had violated 12-62 of the General Statutes, based solely on charges in the field card values without obtaining either our concurrence specifically to each change or the concurrence of Mrs. Nordquist?

A. Yes, sir.

Q. And was your claim that Mrs. Holbrook had violated State Statute 12-60, based solely on the twenty-seven changes in assessments that had been made through the Board of Tax Review after the grand list had been signed?

A. Yes, sir.

Q. Now, OPM, we can agree, can't we, is a State Agency that's generally in charge of municipal offices?

A. Yes, sir.

Q. And OPM establishes the standards of conduct for assessors?

A. Yes, sir.

Q. It provides courses in instructing assessors?

A. Yes, sir.

Q. And it certifies assessors who have completed sufficient education to warrant state certification as an assessor?

A. Yes, sir.

Q. Now at the time you sent these charges in or gave them to Mr. Morrison to send in on April 29th, you had already learned that on your list of 445, more than 100 of the changes included in that list had, in fact, been done by the Reval Company?

A. Yes, sir.

Q. And did CPM send in a two-man team composed of Mr. Zimbowski and Mr. Tumora? (phonetic spelling)

A. Yes, sir.

A. Yes, sir.

Q. And was the head of that team Mr.

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Zimbouski?

A. Yes, sir.

Q. And was he the same man that appeared in court a week or so ago?

A. Yes, sir.

Q. Were you present when he testified?

A. Yes, sir.

Q. And you met with these officials?

A. Yes, sir.

Q. And did you meet with him on three occasions?

A. There were four actual occasions they were in.

Q. And did you present them with all the data in support of your charges that you wanted to?

A. Yes, sir.

Q. And did you furnish Mr. Zimbouski with a list of the 445 properties?

A. Yes, sir.

Q. Had you reviewed this list with Mr.

Viagrande or anyone from the Revaluation Company before giving it to Mr. Zimbouski?

A. When you say, "review", there were discussions, but not a review.

Q. Is you answer then that now, you did not review it --

A. Not completely.

Q. With Mr. Viagrande? Does that mean that you reviewed it to some extent with him?

A. Yes, sir.

Q. Would you look at page 156 of your Deposition?

A. What line, sir?

Q. Right at the bottom, lines 22 to 25, and on page 157 at the top two lines.

A. That's right, sir.

Q. Let me ask you the question again. Had you, prior to giving this list to Mr. Zimbouski, reviewed it with Mr. Viagrande?

A. No, not the entire list, sir.

Q. You hadn't reviewed it with him at all?

A. At the March 22 meeting we had discussed the list, yes.

Q. He had never seen the list before, had he?

A. No, he had never seen the list. We discussed the changes.

Q. In developing the statutory villation (sic) charges that you accused Mrs. Holbrook of, you took another Statute, namely 12-113, which pertains only to Board of Tax Review?

A. Yes, sir.

Q. And you attributed its guidelines to assessors as well?

A. Yes, sir. That wasn't in my charge, sir.

Q. When you met with the OPM officials on those four occasions that you mentioned a moment ago, you made further accusations against Mrs. Holbrook in addition to those statutory violations set out in your letter of April 29th?

A. No, sir.

Q. You did not make additional accusations?

A. No, sir.

Q. Did you tell Mr. Zimbouski or did you accuse Mrs. Holbrook to Mr. Zimbouski of having improperly lowered values on properties owned by her family?

A. Yes, sir.

Q. Did you tell Mr. Zimbouski that the list of twenty-seven charges that you had prepared did not constitute clerical error corrections?

A. Part of it sir, yes, sir.

Q. Would you look at page 165 of your Deposition? Lines 9 through 13. And let me ask you the question again when you are ready. When you furnished the list of twenty-seven to the investigator from OPM, did you tell them the list of twenty-seven properties represented changes made by the assessors that did not constitute clerical error?

A. Yes, sir.

Q. And did you furnish that list in support -

of the charges that had been made in your letter of April 29th to OPM?

A. Yes, sir.

Q. Your accusation was that Mrs. Holbrook had made changes in the grand list after it had been signed and turned over to the Board of Tax Review, isn't that true?

A. Yes, sir.

Q. But you don't claim that Mrs. Holbrook directlly made those changes, do you?

A. Changes where, sir?

Q. In the grand list itself.

A. Not in the grand list, sir, in the field cards.

Q. Your contention was that Mrs. Holbrook had affected changes in assessed values after the statutory deadline in which to do so had, in fact, passed?

A. Yes, sir.

Q. Did you also tell the OPM investigators that Mrs. Holbrook had reduced value on Essex Road

properties in which her husband had an interest?

A. Yes, sir.

Q. Would you like to correct the statement you made awhile ago that you did not bring any additional accusations or charges against Mrs. Holbrook during your meetings with the OPM investigators?

A. No, sir, because these were part of the original charges. They were clarifications of the original charges that were contained in the list of 445.

Q. These were elaborations on the two statutory violations charges?

A. Yes, sir.

Q. And they were contained in that list of the 445, so they weren't additional charges?

A. No, sir.

Q. Well, did the list of 445 go to OPM with your letter of April 29th?

A. No, sir.

Q. You gave that to the investigators

during their investigation?

A. The first meeting sir, yes, sir.

Q. And you elaborated on the charges and accusations that you were bringing against Mrs. Holbrook?

A. Elaborated, yes, sir.

Q. Did you tell the OPM investigators that Mrs. Holbrook had improperly designated property as landlocked when it was not?

A. Yes, sir.

Q. Did you tell OPM that Mrs. Holbrook had improperly combined abutting lots to reduce the total assessed value to property owners?

A. Yes, sir.

Q. And OPM found that all of these charges and accusations were untrue?

A. Well, I've -- well --

Q. Isn't that true?

A. Yes, sir. Yes, sir.

Q. Did you tell OPM that you had done no work in the revaluation process?

A. Yes, sir. Basically.

Q. Now the OPM report was issued sometime in June?

A. June 22 it's dated. June 22 it was delivered on June 24.

* * * * *

(T(3)pp. 26-30)

BY MR. SULLIVAN:

Q. You rejected the findings of Mr. Zimbouski and Mr. Tumora as inaccurate, isn't that true?

A. Yes, sir.

Q. And you requested the inveestigation be re-opened?

A. Yes, sir.

Q. And you asked OPM to give you copies of the cases cited in its report?

A. Yes, sir.

Q. And finally, on August 24th of 1982, did you write a four-page letter to Mr. Milano, who is head of OPM?

A. Yes, sir.

Q. Showing you Defendant's Exhibit A, which is a four-page letter addressed to Mr. Anthony Milano, will you tell me if that letter was signed by you?

A. Yes, sir.

Q. That is your signature?

A. Yes, sir.

Q. I will just leave it here for the moment. Now did you understand that Mr. Milano was the head of the OPM Agency?

A. Yes, sir.

Q. And did you understand that at the time you wrote this letter?

A. Oh, yes, sir.

Q. As head of the agency, did you understand that Mr. Milano was Mr. Zimbouski's superior?

A. Yes, sir.

Q. And did you complain to Mr. Milano about the inaccuracies of the finding of Mr. Zimbouski

and Mr. Tumora's report?

A. Yes, sir.

Q. And did you accuse in that letter Holbrook of erasing and reducing values of properties in which her husband had a part ownership?

A. Yes, sir.

Q. And were you referring, in doing that, to the fact that Mr. Holbrook had a mortgage and a piece of property?

A. That and others, sir.

Q. Is that what you meant by "part ownership"?

A. Yes, sir.

Q. In your letter to Mr. Milano, did you accuse Mrs. Holbrook of improperly classifying properties as landlocked?

A. Yes, sir.

Q. And did you further accuse her of improperly combining these properties to reduce their values?

A. Yes, sir.

Q. Did you further accuse her in that letter of improperly valuing a junkyard in town?

A. Yes, sir.

Q. Did you accuse Mrs. Holbrook also in that letter of not obtaining the concurrence of at least one other board member before establishing the values on the properties about which you were complaining?

A. Yes, sir.

Q. Did you further accuse her of improperly reducing the value of the Woodstock property?

A. Yes, sir.

Q. Did you admit that some of the entries in that list of twenty-seven, that is the changes that were made after the grand list was signed, did you come to admit that some of them were clerical errors?

A. Yes, sir. They were so noted.

Q. How many do you admit were clerical errors out of the twenty-seven?

A. I don't know offhand, sir. I would have to look at the list.

Q. I would be glad to provide you with the list. (Whereupon counsel hands such list to the witness.)

A. Nine, sir.

Q. You still contend that eighteen out of the twenty-seven were not clerical error corrections?

A. Yes, sir. Yes, sir.

Q. Did you, in your letter to Mr. Milano in August of 1982, complain that the Board of Tax Review had violated Statute 12-113 by reducing assessed values without requiring property owners to appear before it?

A. Yes, sir.

Q. And did you, in your letter to Mr. Milano, make the claim that the Statute 12-113 limited the Board of Tax Review --

A. Yes, sir.

Q. -- in its function? And did you further

dispute the OPM findings that erasures on the field cards were not illegal?

A. Yes, sir.

Q. And finally, did you claim that Mrs. Nordquist, your fellow assessor, had been duped into signing the grand list?

A. Yes, sir.

Q. Was that your conclusion or something that came from her?

A. That was my conclusion, sir.

Q. Now, in the accusations which you brought against Mrs. Holbrook, whether you call them elaborations or individual accusations, you accused her of favoritism in establishing the assessed values for properties, isn't that true?

A. The word bothers me. The meaning doesn't, but the word bothers me.

* * * * *

(T.(3)pp. 33)

THE COURT: You object to the word "favoritism". How would you characterize it?

THE WITNESS: What I actually said was, "she took care of her family and friends." That was my --

THE COURT: You said that the Plaintiff took care of her family and friends? Now, who did you say this to?

THE WITNESS: Who? I said this to OPM.

THE WITNESS: Yes.

THE COURT: All right. Now, you've read your Deposition at the point that Mr. Sullivan directed you to?

THE WITNESS: Yes, sir.

THE COURT: Is there anything about that last statement that you --

THE WITNESS: Just the words, sir. If he had asked me the question as it relates -- if he had asked me the question and stated, "had you made a charge that she took care of her family and friends," I would have answered yes, sir.

THE COURT: All right.

* * * * *

(T.(3)pp. 37)

BY MR. SULLIVAN:

Q. Did you also to OPM accuse Mrs. Holbrook of dereliction of her duties as Assessor?

A. The word "dereliction", I don't know, sir. Will you explain that to me?

Q. Will you look at your Deposition, page 223, line 13 through 16.

A. Yes, sir. Yes, sir.

Q. Did you recognize at the time you made these accusations, that you were accusing Mrs. Holbrook of dereliction in violation of her duties as an Assessor?

A. Yes, sir.

Q. Did you also accuse Mrs. Holbrook of violating another statute, a Wetland Statute, namely 22a-45?

A. No, sir.

Q. At a meeting with Mr. Morrison on March

10th, did you raise the claim that Mrs. Holbrook had improperly used wetland consideration to affect an assessed value?

A. No, sir.

Q. Is it your testimony today that you did not accuse Mrs. Holbrook of violating 22a-45 of the General Statutes?

A. I didn't accuse her, sir. I asked her why she hadn't followed the procedures.

* * * * *

(T.(3)pp. 44-45)

Q. And will you tell the ladies and gentlemen of the jury what your claim was with respect to Mrs. Holbrook's conduct in the Wetlands Statute?

A. Actually, you were to receive a letter from a tax payer asking for recognition of the fact that you had wetlands and you were seeking a reduction on the basis that you couldn't use the wetlands.

Q. Let me see if I understand that. It was

your opinion and belief that before an assessor could apply wetlands as a factor to reduce the accused value of property, there had to be some sort of letter from the owner showing that he or she had been denied permission to conudct a regulated activity?

A. That they might be denied. It doesn't necessarily say the word "may" is in there.

Q. It had to be something from the Wetland's Commission showing a restriction on the owner's use?

A. Not necessarily, no, sir. It would have to be a letter from the tax payer indicating that there was wetlands there and there may be a possibility that they couldn't use that property because of the wetlands and they wanted consideration based on the fact that they might not be able to use it.

Q. When you obtained a reduction in your own property because of swamp on your property, did you send a letter to anyone?

A. Mr. Sullivan, there's a difference between wetland and swamp.

Q. Do you believe that to be true?

A. Yes, sir.

Q. Have you read the wetland's definition of wetland, the Statutory definition?

A. Yes, sir.

Q. And do you know it includes swamp as a definition of wetland?

A. Not as earmarked on the swamps in the town of Westbrook, sir.

Q. We are talking about the Statute.

A. Well, I'll read it again.

Q. Do you have it with you?

A. Yes, sir.

Q. Do you have the definitions?

A. Definitions, sir? No, sir. Just the Statute.

Q. It's in the Statute.

* * * * *

(T.(3)pp. 47-48)

Q. Let's find the one that -- I guess we want 22a-37 and 22a-38. But you agree that that applies to inland wetlands?

A. If you let me read it.

MR. ERRANTE: Which Statute is the witness reading now?

MR. SULLIVAN: Twenty-two a-thirty-eight.

MR. ERRANTE: Thirty-eight, thank you.

THE WITNESS: Yes, sir.

BY MR. SULLIVAN:

Q. From what you said a moment ago, I take it the wetland of such it was that affected your property was not title in nature?

A. It isn't inland either, sir.

Q. And if anything, it would go under inland wetland?

Q. And have you ever seen this Statute before, 22a-38?

A. No, sir.

* * * * *

(T.(3)pp. 94)

Q. And is it so that once Joan Holbrook returned from vacation, you put no more time in the office until February 23?

A. Yes, sir.

* * * * *

(T.(3)pp. 95)

BY MR. SULLIVAN:

Q. The time that you put in there from February 23rd on was a good part of that time spent investigating the records in connection with charges that you were bringing against Holbrook?

A. Yes, sir.

Q. And were you paid for that time as assessor?

(T.(3)pp. 101-104)

Q. My question to you is, whether you had ever asked her to review the basis for each of the changes?

A. Not at that time, no.

Q. Did you ever do it?

A. March 10th meeting.

Q. This was at the meeting that took place with the selectman?

A. Yes, sir.

Q. This was after you had at least instituted some of the charges that you were bringing against her?

A. No, sir. There were no charges at that time. The meeting of March 10th was called to try to straighten this thing out before it went any further.

Q. Are you testifying that on March 10th you asked her to review with you what the basis for the change had been on each of the cards where you had noticed a correction?

A. Not all of them, sir, we took specific ones.

Q. Isn't it so that you were dealing with marinas, farm lands and junkyards only at that point in time?

A. Well, there were a couple of others, sir.

Q. To others by a "couple"?

A. Well I don't know how many really.

Q. But as to the others, you didn't ask her about them?

A. Not at that point, no.

Q. Later?

A. No. I can't say that I did.

Q. What were the two others that you mentioned in addition to the farm?

A. One was Borton. I don't recall what the others were offhand.

Q. Bordon?

A. Borton, B-O-R-T-O-N, sir.

Q. B-O-R-T-O-N?

A. Borton, B-O-R-T-O-N.

Q. George Borton?

A. Yes, sir.

Q. And you don't remember the other one?

A. Offhand, I don't.

Q. Did Mrs. Holbrook ever offer any basis

for the changes made on the field cards?

A. At that point I asked Mr. Viagrande if he had made the change.

Q. I am sorry, then perhaps again we're cross-talking. I asked you whether you had asked Mrs. Holbrook to explain, I thought you said yes.

A. And then Mrs. Holbrook explained that she made the change.

Q. Did you ask her the basis for the changes on these cards that had been made?

A. I asked Mr. Viagrande to explain what had been done and then Mrs. Holbrook said that she put a ten percent deduction on for rear lot.

Q. And that is only for Borton, isn't that so?

A. Yes, sir.

Q. Well, did you ask her to explain the basis for any changes or corrections in terms of farm, the junkyard and the marinas?

A. Yes, sir.

Q. Are you saying that changes had been

made in the field cards for the farm land?

A. No, sir.

Q. So the only one you are talking about is the junkyard?

A. Yes, sir.

Q. Did she explain to you what the basis for that had been?

A. Which one?

Q. You already mentioned Borton, the only other one is the junkyard. Did she offer you an explanation?

A. Yes, sir.

Q. Was that explanation satisfactory to you?

A. No, sir.

Q. And so you pursued that particular matter?

A. Yes, sir.

Q. And I take it from your testimony that as to any of the other changes on the field cards, you did not ask Mrs. Holbrook specifically to sit

down and review the basis for the changes she had made with you?

A. Mrs. Holbrook, at one point, admitted that she had made the changes. She said, let's not beat around the bush.

Q. Mr. Casazza, I don't want to insist upon taking your point that you all have heard many times. I would like you to answer the question. Whether, apart from what you've just said, at any time you asked Mrs. Holbrook and explain the basis for the changes that she had made, and has always admitted having made?

* * * * *

(T.(3)pp. 105-106)-

BY MR. SULLIVAN:

Q. Do you remember the question?

A. Yes, sir.

Q. Will you answer it, please?

A. I can't answer it.

Q. Is it so, Mr. Casazza, that you never accused Mrs. Holbrook of lowering the value on any

specific marina? That is, you didn't isolate a specific marina, such as her husband's, and accuse her of lowering the value?

A. I never accused her of lowering it, mechanically.

Q. Of course not. Your accusation about the marina was directed at all of the marinas in the Town of Westbrook?

A. Yes, sir.

Q. And your complaint about that was that you felt that the per acre value assigned by the assessor was too low?

A. Yes.

Q. But you never pointed out to her, or claimed that she had altered her husband's marina's assessed value in any particular way? Isn't that true?

A. Well, let me think. Yes, sir.

Q. Now, Mr. Zimbouski, when he was here, testified that you had also accused Mrs. Holbrook of increasing persons in her disfavor, Wilcox and

Willa. Will you tell us, beginning with Mr. Zimbouski, what the basis for that complaint was?

A. I have no complaint with that, because at the time it was done, I agreed with Mrs. Holbrook, actually.

* * * * *

(T.(3)pp. 108)

BY MR. SULLIVAN:

Q. Did you tell Mr. Zimbouski that, with respect to a person named wilcox, Mrs. Holbrook had increased his assessments because he was in her disfavor? He or she? Do you deny that?

A. I don't deny it. I know the cards are there, and I asked her to have a look at them so I could see.

* * * * *

HOLBROOK V. NORDQUIST

MEMORANDUM OF DECISION
RE: DEFENDANT'S MOTION FOR
JUDGMENT N.O.V.

In this libel and slander action, the jury returned a verdict in favor of the plaintiff.

The court having reserved decision on the defendant's motion for a directed verdict, the defendant now seeks a judgment N.O.V.

The defendant claims that the plaintiff failed to sustain her burden of proof both as to the falsity of the statements and as to their utterance or publication with malice. In this lengthy trial, there was an abundance of evidence supportive of the plaintiff's claims. Testimonial evidence included acknowledgement by the defendant that she made certain accusations against the plaintiff concerning her official conduct as chairman of the Westbrook Board of Assessors. Documentary evidence included numerous newspaper articles based on these allegations and resulting investigations.

In deciding this matter, the court is required to review the evidence in the light most favorable to sustaining the verdict. Herb v. Kerr, 190 Conn. 136, 140 (1983); Douglass v. 95 Pearl Street Corp., 157 Conn. 73 (1968). Conclusions as to facts, the credibility of the witnesses and the weight to be afforded the testimony of witnesses are matters for the determination of the jury. In the opinion of the court, the jury, based on all the evidence presented, could have reasonably found (1) that the defendant uttered and published defamatory statements about her; (2) that such defamatory statements were false; and (3) that the defendant acted with actual malice in uttering and publishing such defamatory statements.

The defendant's plea to set aside the verdict and enter judgment in accordance with her motion for a directed verdict is denied.

HOLBROOK V. NORDQUIST
RE: DEFENDANT'S MOTION
TO SET ASIDE VERDICT

In this libel and slander action, the jury awarded the following damages: (1) $7,000.00 as general damages; (2) $45,250.00 as special damages; and (3) $17,416.00 and $1,950.00 as exemplary damages.

In her motion to set aside the verdict, the defendant contends that the verdict was contrary to the law, against the weight of evidence and excessive. In the opinion of the court, this verdict is sustainable both in law and fact as is more fully set forth in this court's Memorandum of Decision, dated September 9, 1985, regarding the defendant's motion for judgment N.O.V.

The defendant makes additional legal arguments in this motion. The first of these concerns the award of exemplary damages. The jury followed the instructions of the court in awarding the sum of $17,416.00, representing the plaintiff's attorney's fees at the rate of

one-third of the sum of the awards for general and special damages. The smaller additional award for exemplary damages was apparently the jury's attempt to award the plaintiff a sum for other expenses in connection with this lawsuit and its companion case, Holbrook v. Casazza, Docket No. 38546, Superior Court, J.D. Middlesex.1. The court instructed the jury that the total of such expenses was $3,982.44. It should have awarded to the plaintiff part of this amount from each defendant in the same proportion as it did the other damages. Accordingly, a remittitur of $954.00 is ordered with respect to the award of exemplary damages.

The defendant claims that the court erred in not redefining the standard of proof of clear and convincing evidence in response to a question from the jury seeking a redefinition of malice (Court's Exhibit 2). The court answered the specific question directly and to the jurors' apparent satisfaction.

The court does not find the unmistakable error and unquestionable harm required to set aside a verdict on the ground of error in the court's instructions. See Gaul v. Noiva, 155 Conn. 218, 220 (1967).

The defendant claims further that the verdict should be set aside because of the court's failure to administer the juror's oath to an alternate juror when she assumed the status of juror. A reading of the oath for alternate jurors in civil causes, contained in General Statutes Sec. 1-25, reveals the lack of merit in the defendant's claim. The juror involved was administered this oath at the outset of the trial when she had the status of alternate juror. Additionally, the defendant made no objection during trial regarding the court's procedure.

The defendant also claims that the verdict should be set aside because of the court's ruling on the admissibility of proposed testimony of a real estate appraiser, Edward Heberger. The court

reaffirms its evidentiary ruling to which the defendant took exception.

The defendant's next claim as to why the verdict should be set aside involves her assertion that the jury was unduly prejudiced by plaintiff's counsel's reference to prior settlement negotiations by town officials. No questions regarding settlement negotiations were permitted by the court and the jury was promptly instructed by the court to disregard any reference to the payment of attorneys' fees by the town of Westbrook.

Finally, the defendant claims the verdict was excessive and could only have been rendered if the jury was prejudiced or inflamed. The court finds no merit whatsoever to this claim. The size of the verdict was not so large as to compel the conclusion that the jurors were influenced by partiality, prejudice, mistake or corruption.

The motion to set aside the verdict is denied and judgment may enter for the plaintiff in

accordance with the verdict as corrected by the aforesaid remittitur.

HOLBROOK V. CASAZZA
MEMORANDUM OF DECISION RE:
DEFENDANT'S MOTION FOR
JUDGMENT N.O.V.

In this libel and slander action, the jury returned a verdict in favor of the plaintiff. The court having reserved decision on the defendant's motion for a directed verdict, the defendant now seeks a judgment N.O.V.

The defendant claims that the plaintiff failed to sustain her burden of proof both as to the falsity of the statements and as to their utterance or publication with malice. In this lengthy trial, there was an abundance of evidence supportive of the plaintiff's claims. Testimonial evidence included acknowledgement by the defendant that he made certain accusations against the plaintiff concerning her official conduct as chairman of the Westbrook Board of Assessors. Documentary evidence included numerous newspaper articles based on these allegations and resulting investigations.

In deciding this matter, the court is required to review this evidence in the light most favorable to sustaining the verdict. Herb v. Kerr, 190 Conn. 136, 140 (1983); Douglass v. 95 Pearl Street Corp., 157 Conn. 73 (1968). Conclusions as to facts, the credibility of the witnesses and the weight to be afforded the testimony of witnesses are matters for the determination of the jury. In the opinion of the court, the jury, based on all the evidence presented, could have reasonably found (1) that the defendant uttered and published defamatory statements about her; (2) that such defamatory statements were false; and (3) that the defendant acted with actual malice in uttering and publishing such defamatory statements.

The defendant's plea to set aside the verdict and enter judgment in accordance with his motion for a directed verdict is denied.

HOLBROOK V. CASAZZA
MEMORANDUM OF DECISION
RE: DEFENDANT'S MOTION
TO SET ASIDE VERDICT

In this libel and slander action, the jury awarded the plaintiff the following damages: (1) $21,000.00 as general damages; (2) $135,750.00 as special damages; and (3) $52,251.00 and $5,860.00 as exemplary damages.

In his motion to set aside the verdict, the defendant contends that the verdict was contrary to the law, against the weight of evidence and excessive. In the opinion of the court, this verdict is sustainable both in law and fact as is more fully set forth in the court's Memorandum of Decision dated September 9, 1985, regarding the defendant's motion for judgment N.O.V.

The defendant makes additional legal arguments in this motion. The first of these concerns the award of exemplary damages. The jury followed the instructions of the court in awarding the sum of $52,251.00, representing the

plaintiff's attorney's fees at the rate of one-third of the sum of the awards for general and special damages. The small additional award for exemplary damages was apparently the jury's attempt to award the plaintiff a sum for other expenses in connection with this lawsuit and its companion case, Holbrook v. Nordquist, Docket No. 38547, Superior Court, J.D. Middlesex.1. The court instructed the jury that the total of such expenses was $3,982.44. It should have awarded to the plaintiff part of this amount from each defendant in the same proportion as it did the other damages. Accordingly, a remittitur of $2,874.00 is ordered with respect to the award of exemplary damages.

The defendant claims that the court erred in not redefining the standard of proof of clear and convincing evidence in response to a question from the jury seeking a redefinition of malice. (Court's Exhibit 2). The court answered the specific question directly and to the jurors'

apparent satisfaction. The court does not find the unmistakable error and unquestionable harm required to set aside a verdict on the ground of error in the court's instructions. See Gaul v. Noiva, 155 Conn. 218, 220 (1967).

The defendant claims further that the verdict should be set aside because of the court's failure to administer the juror's oath to an alternate juror when she assumed the status of juror. A reading of the oath for alternate jurors in civil causes, contained in General Statutes Sec. 1-25, reveals the lack of merit in the defendant's claim. The juror involved was adminstered this oath at the outset of the trial when she had the status of alternate juror. Additionally, the defendant made no objection during trial regarding the court's procedure.

The defendant also claims that the verdict should be set aside because of the court's ruling on the admissibility of proposed testimony of a real estate appraiser, Edward Heberger. The court

reaffirms its evidentiary ruling to which the defendant took exception.

The defendant's next claim as to why the verdict should be set aside involves his assertion that the jury was unduly prejudiced by plaintiff's counsel's reference to prior settlement negotiations by town officials. No questions regarding settlement negotiations were permitted by the court and the jury was promptly instructed by the court to disregard any reference to the payment of attorneys' fees by the town of Westbrook.

Finally, the defendant claims the verdict was excessive and could only have been rendered if the jury was prejudiced or inflamed. The court finds no merit whatsoever to this claim. The size of the verdict was not so large as to compel the conclusion that the jurors were influenced by partiality, prejudice, mistake or corruption.

The motion to set aside the verdict is denied and judgment may enter for the plaintiff in

accordance with the verdict as corrected by the aforesaid remittitur.